48/chap. 15 - end/990

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Federal Acquisition Regulations System

48

CHAPTER 15 TO END
Revised as of October 1, 1990

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Federal Acquisition Regulations System

48

CHAPTER 15 TO END

Revised as of October 1, 1990

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1990

With Ancillaries

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1985

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To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 1501.000 *refers to title 48, part 1501, section 000.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

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OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

October 1, 1990.

THIS TITLE

Title 48—Federal Acquisition Regulations System is composed of seven volumes. The chapters in these volumes contain all current regulations and are arranged as follows: Chapter 1 (Parts 1 to 51), Chapter 1 (Parts 52 to 99), Chapter 2 (Parts 201 to 251), Chapter 2 (Parts 252 to 299), Chapters 3 to 6, Chapters 7 to 14 and Chapter 15 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1990.

The Federal acquisition regulations in Chapter 1 are those government-wide acquisition regulations jointly issued by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. Chapter 2 through end are acquisition regulations issued by individual government agencies. Parts 1 to 69 in each of Chapter 2 through end are reserved for agency regulations *implementing* the Federal acquisition regulations in Chapter 1 and are numerically keyed to them. Parts 70 to 99 in Chapter 2 through end contain agency regulations *supplementing* the Federal acquisition regulations.

The OMB control numbers for the Federal Acquisition Regulations System appear in 1.105 of Chapter 1. For the convenience of the user 1.105 is reprinted in the Finding Aids section of the second volume containing Chapter 1 (Parts 52 to 99).

The two volumes containing Chapter 1 include a subject index to the Federal acquisition regulations. The second volume, containing Chapter 1 (Parts 52 to 99), includes contract clauses and forms. The volume containing Chapter 2 also contains a subject index to the Department of Defense regulations. The volume containing Chapters 7 to 14 includes a Distribution Table for Chapter 9.

For this volume Kevin T. Harris was Chief Editor, assisted by Gertrude E. Belton. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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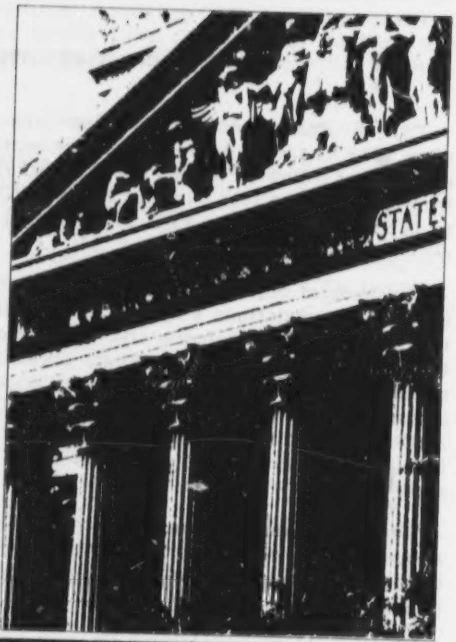

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Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Source: 49 FR 8835, Mar. 8, 1984, unless otherwise noted.

1501.000 Scope of part.

The Federal Acquisition Regulation System brings together, in Title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Government. This part establishes a system of Environmental Protection Agency (EPA) acquisition regulations, referred to as the EPAAR, for the codification and publication of policies and procedures of EPA which implement and supplement the Federal Acquisition Regulation (FAR).

Subpart 1501.1—Purpose, Authority, Issuance

1501.101 Purpose.

(a) This subpart establishes Chapter 15, the Environmental Protection Agency Acquisition Regulation (EPAAR), within Title 48, the Federal Acquisition Regulations System.

(b) The purpose of the EPAAR is to implement the FAR where further implementation is needed and to supplement the FAR when coverage is needed for subject matter not covered in the FAR.

1501.103 Applicability.

The FAR and the EPAAR apply to all acquisitions as defined in part 2 of the FAR, except where expressly excluded.

1501.104 Issuance.

1501.104-1 Publication and code arrangement.

The EPAAR will be published in: (a) The Federal Register, (b) cumulated form in the Code of Federal Regulations (CFR), and (c) a separate loose-leaf form in a distinctive light blue color.

1501.104-2 Arrangement of regulations.

(a) *References and citations.* This regulation may be referred to as the Environmental Protection Agency Acquisition Regulation or the EPAAR. References to EPAAR materials shall be made in a manner similar to that prescribed by FAR 1.104-2(c).

1501.104-3 Copies.

Copies of the EPAAR in Federal Register and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of loose-leaf EPAAR are distributed within EPA and may be obtained from the EPA Facilities and Support Services Division.

Subpart 1503.3—Agency Acquisition Regulations

1501.301 Policy.

The EPAAR is prescribed by the Director, Office of Administration.

1501.303 Codification and public participation.

(a) The EPAAR is codified as Chapter 15 in Title 48, Code of Federal Regulations.

(b) Public participation in promulgation of the EPAAR shall be in the same manner as specified for the FAR in FAR 1.501. Where solicitation of public comment on significant EPAAR revisions is impractical prior to promulgation, the revisions may be set forth in temporary regulations. Comments will be solicited on the temporary regulations and considered prior to formulating the final regulations.

1501.304 Agency control and compliance procedures.

(a) The Assistant General Counsel, Contracts and Information Law, and the Head of the Contracting Activity (HCA) shall review all EPAARs prior to promulgation to assure compliance with FAR part 1.

(b) The EPA representative to the Civilian Agency Acquisition Council (CAA Council) will recommend to the chairperson of the CAA Council any EPA regulatory coverage that should be included in the FAR.

1501.370 OMB control numbers.

The information collection requirements contained in the EPAAR have been approved by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* The OMB clearance numbers are 2030-0005, 2030-0006, and 2030-0007.

Subpart 1501.4—Deviations

1501.401 Definition.

A deviation to the EPAAR is defined in the same manner as a deviation to the FAR (see FAR 1.401).

[49 FR 8835, Mar. 9, 1984; 49 FR 24734, June 15, 1984]

1501.403 Individual deviations.

Requests for individual deviations from the FAR and the EPAAR shall be submitted to the Head of the Contracting Activity (HCA) for approval. Requests submitted shall cite the specific part of the FAR or EPAAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reasons for the action requested. The HCA shall transmit copies of approved individual FAR deviations to the FAR Secretariat.

1501.404 Class deviations.

Requests for class deviations to the EPAAR shall be submitted in advance to the HCA for processing in accordance with FAR 1.404 and this section. Requests submitted shall include the same type of information as required for individual deviations as prescribed in 1501.403. The HCA may approve class deviations to the FAR and the EPAAR and shall transmit copies of approved class FAR deviations to the FAR Secretariat as required by FAR 1.404.

Subpart 1501.6—Contracting Authority and Responsibilities

1501.602-3 Ratification of unauthorized commitments.

(a) *Definition. Unauthorized commitment,* as used in this subpart, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. The term does not relate to the Agency process for the reservation of funds.

(b) *Applicability.* The provisions of this section apply to all unauthorized commitments, whether oral or written and without regard to dollar value. Examples of unauthorized commitments are;

(1) Ordering supplies or services by an individual without contracting authority;

(2) Unauthorized direction of work through assignment of orders or tasks;

(3) Unauthorized addition of new work;

(4) Unauthorized direction of contractors to subcontract with particular firms; or

(5) Any other unauthorized direction which changed the terms and conditions of the contract.

(c) *Ratification approvals and concurrences.* (1) The Chief of the Contracting Office is the ratifying official, provided that he/she has redelegable contracting authority.

(2) For ratification actions which arise in regional offices or laboratory sites, the Chief of the Contracting Office to whom the activity functionally reports is the ratifying official, provided that he/she has redelegable authority. The responsible Procurement and Contracts Management Division (PCMD) Associate Director is the ratifying official for actions which arise in regional or laboratory sites which do not functionally report to a contracting officer.

(3) All proposed ratification actions of $250,000 or more for which the responsible PCMD Associate Director is not the ratifying official shall be forwarded for review to the responsible PCMD Associate Director prior to approval by the ratifying official.

(d) *Procedures.* (1) The program office shall notify the cognizant contracting office by memorandum of the circumstances surrounding an unauthorized commitment. The notification shall include:

(i) All relevant documents and records;

(ii) Documentation of the necessity for the work and benefit derived by the Government;

(iii) A statement of the delivery status of the supplies or services associated with the unauthorized commitment;

(iv) A list of the procurement sources solicited (if any) and the rationale for the source selected;

(v) If only one source was solicited, a justification for other than full and open competition (JOFOC) as required by FAR 6.302, FAR 6.303, and 1506.303, or for small purchases exceeding the competition threshold in FAR 13.106, a sole source justification as required by 1513.170;

(vi) A statement of steps taken or proposed to prevent reoccurrence of any unauthorized commitment.

(2) The Division Director (or equivalent) of the responsible office shall approve the memorandum. If expenditure of funds is involved, the program office shall include a Procurement Request/Order, EPA Form 1900-8, with funding sufficient to cover the action. The appropriation data cited on the 1900-8 shall be valid for the period in which the unauthorized commitment was made.

(3) Upon receiving the notification, the Contracting Officer shall prepare a determination and findings regarding ratification of the unauthorized commitment for the ratifying official. The determination and findings shall include sufficient detail to support the recommended action. If ratification of the unauthorized commitment is recommended, the determination and findings shall include a determination that the price is fair and reasonable. To document the determination, additional information may be required from the Contractor. Concurrence by the Office of General Counsel is not mandatory, but shall be sought in difficult or unusual cases.

(4) The ratifying official may inform the Inspector General (IG) of the action by memorandum through the Head of the Contracting Activity (HCA). For ratification actions exceeding the small purchase limitation, the ratifying official shall submit a memorandum to the Assistant Administrator for Administration and Resources Management through the HCA for transmittal to the Assistant, Associate, or Regional Administrator (or equivalent level) of the person responsible for the unauthorized commitment. This memorandum should contain a brief description of the circumstances surrounding the unauthorized commitment, recommend corrective action, and include a copy of any memoran-

dum sent to the IG. Submission of a memorandum to the appropriate Assistant, Associate, or Regional Administrator for unauthorized commitments at or below the small purchase limitation is optional and may be accomplished at the discretion of the ratifying official.

(e) *Paid Advertisements.* (1) EPA is generally not authorized to ratify improperly ordered paid advertisements. The ratifying official, however, may determine payment is proper subject to the limitations in FAR 1.602-3(c) if the individual responsible for the unauthorized commitment acted in good faith to comply with Agency acquisition policies and procedures.

(2) The paying office shall forward invoice claims received in its office for improper paid advertisements to the cognizant ratifying official for a determination regarding ratification of the action.

(3) If the ratifying official determines that an unauthorized commitment cannot be ratified by the Agency, the ratifying official shall instruct the submitter to present its claim to the General Accounting Office in accordance with the instructions contained in 4 CFR part 31, Claims Against the United States, General Procedures.

(f) *Payment of Properly Ratified Claims.* After the unauthorized commitment is ratified, the Contractor must submit an invoice (or resubmit an invoice if one was previously submitted) citing the appropriate contract or purchase order number.

[55 FR 18340, May 2, 1990]

1501.603 Selection, appointment, and termination of appointment.

1501-603-1 General.

EPA Contracting Officers shall be selected and appointed and their appointments terminated in accordance with the Contracting Officer warrant program specified in Chapter 8 of the EPA "Contracts Management Manual."

1501.670-1 General.

Execution of otherwise proper contracts made by individuals without contracting authority, or by Contracting Officers in excess of the limits of their delegated authority, may be later ratified in accordance with the policies and procedures prescribed in this section. To be effective, such ratification must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by a person authorized to ratify such acts. Officials cited in 1501.670-6 are authorized to ratify previously unauthorized acts.

1501.670-2 Applicability.

With the exception of paid advertisements, the provisions of this section apply to all unauthorized contract actions, whether oral or written and without regard to dollar value. Examples of unauthorized contract actions are: (a) Ordering supplies or services by an individual without contracting authority; (b) unauthorized direction of work through assignment of orders or tasks; (c) unauthorized addition of new work; (d) directing Contractors to subcontract with particular firms; or (e) unauthorized direction which changes the terms and conditions of the contract. All ratifications are subject to the requirements of 1501.670-1 and the determination of a properly designated Contracting Officer to ratify the unauthorize contract action.

1501.670-3 Definitions.

Ratification means the execution, by an authorized Contracting Officer, of a document retroactively formalizing a contract action of: (a) An individual who acted without contracting authority; or (b) a Contracting Officer who acted beyond his or her delegated authority.

Unauthorized Action means a contract action taken by an individual without contracting authority or a contract action by an individual acting beyond the limits of his or her delegated contracting authority.

1501.670-4 Policy.

Contracting actions taken by personnel without formally delegated contracting authority do not legally obligate the Government for the expenditure of funds. If an unauthorized contract action would have been valid had it been authorized by a Contracting Officer, then the Contracting Officer may ratify the unauthorized action. If an unauthorized action is otherwise improper, a Contracting Officer cannot ratify it and the Agency must deny legal liability, in which case the person committing the unauthorized action may be personally liable.

1501.670-5 Procedures.

(a) The program office will notify the cognizant contract office by memorandum of the circumstances surrounding any unauthorized action. This notification will include:

(1) All relevant documents and records,

(2) Documentation why the work was necessary to and for the benefit of the Government, and;

(3) A statement of steps taken or proposed to prevent reoccurrence of the unauthorized action.

(b) The division director (or equivalent) of the responsible office shall approve the memorandum. If expenditure of funds is involved, as part of this submission the program office shall include a Procurement Request/Order, EPA Form 1900-8, with funding sufficient to cover the supplies or services. For any new work, or work beyond the scope of an existing contract, the program office shall submit a justification for other than full and open competition (JOFOC) as required by FAR 6.302, FAR 6.303, and 1506.303 or for small purchases, a sole source justification as required by 1513.170 of this chapter.

(c) Upon receiving the notification the Contracting Officer shall make a determination and findings regarding ratification of the unauthorized action. In order to document this determination, additional information may be required from the Contractor and an opinion from the Office of General Counsel may be necessary. Concurrently, the Contracting Officer may, at his/her discretion, inform the Inspector General (IG) of the action by memorandum routed through the Head of the Contracting Activity (HCA). The Contracting Officer shall also prepare a memorandum from the Assistant Administrator for Administration and Resources Management to the Assistant, Associate, or Regional Administrator (or equivalent level) of the person committing the unauthorized action. This memorandum shall contain a brief description of the circumstances surrounding the unauthorized action, recommend corrective action, and include a copy of the memorandum sent to the IG. Submission of a memorandum to the appropriate Assistant, Associate, or Regional Administrator for unauthorized actions involving small purchases is optional and may be accomplished at the discretion of the Chief of the Contracting Office or a Management Division Director or equivalent at a regional or field activity.

[49 FR 8835, Mar. 8, 1984, as amended at 50 FR 14357, Apr. 11, 1985]

1501.670-6 Ratification approvals and concurrences.

(a) The Chief of the Contracting Office is the ratifying official, provided that he/she has redelegable contracting authority.

(b) For ratification actions which arise in regional offices or laboratory sites, the Chief of the Contracting Office to whom the activity functionally reports is the ratifying official, provided that he/she has redelegable contracting authority. The HCA is the ratifying official for actions which arise in regional or laboratory sites which do not functionally report to a contracting office.

(c) The RAD shall review all ratification actions of $250,000 or more.

[49 FR 8835, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

1501.670-7 Exception.

EPA is not authorized to ratify improperly ordered paid advertisements. Therefore, the cognizant paying office shall return to the Contractor all voucher claims not accompanied by a written prior authorization. If there was not prior authorization, the paying office shall instruct the Contractor to present its claim directly to the General Accounting Office in accordance with the instructions contained in 4 CFR part 31, Claims

Against the United States, General Procedures.

PART 1502—DEFINITION OF WORDS AND TERMS

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8836, Mar. 8, 1984, unless otherwise noted.

Subpart 1502.1—Definitions

1502.100 Definitions.

Chief of the Contracting Office means the Branch Chief(s) at the Headquarters Procurement Operations and the Directors of the Contracts Management Divisions at Research Triangle Park and Cincinnati.

Head of the Contracting Activity (HCA) means the Director, Procurement and Contracts Management Division.

Legal counsel means those attorneys assigned to the Contracts and Information Law Branch, Office of the General Counsel and designated by the Assistant General Counsel as contract law specialists.

Procurement Executive means the Director, Procurement and Contracts Management Division.

Responsible Associate Director (RAD) means the individual within the Procurement and Contracts Management Division with the title of Associate Director, delegated responsibility for the contract action, and reporting directly to the Director, Procurement and Contracts Management Division.

[49 FR 8836, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

PART 1503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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1503.600-70 Scope of subpart.
1503.600-71 Definitions.
1503.601 Policy.
1503.602 Exceptions.
1503.603 Responsibilities of the contracting officer.
1503.670 Solicitation disclosure provision.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8837, Mar. 8, 1984, unless otherwise noted.

1503.000 Scope of part.

This part implements FAR part 3, cites EPA regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 1503.1—Safeguards

1503.101 Standards of conduct.

1503.101-3 Agency regulations.

EPA regualtions on Employee Responsibilities and Conduct are contained in 40 CFR part 3. All personnel involved in acquisition actions shall become familiar with the statutory and regulatory prohibitions. Any problems or questions concerning 40 CFR part 3 shall be referred to the appropriate Deputy Ethics Official pursuant to 40 CFR part 3, subpart B.

1503.103 Independent pricing.

1503.103–2 Evaluating the certification.

Whenever an offer is rejected under FAR 3.103–2 or the Certificate of Independent Price Determination is suspected of being false, the Contracting Officer shall report the situation to the Inspector General through the Head of the Contracting Activity for referral to the Attorney General in accordance with FAR 3.303.

Subpart 1503.2—Contractor Gratuities to Government Personnel

1503.203 Reporting suspected violations of the gratuities clause.

EPA personnel, particularly Contracting Officers, shall promptly report, by memorandum, suspected violations of the Gratuities clause in solicitations or contracts to the Inspector General through the Head of the Contracting Activity.

Subpart 1503.3—Reports of Suspected Antitrust Violations

1503.301 General.

The Contracting Officer shall report any suspected violations of antitrust laws to the Inspector General through the Responsible Associate Director (RAD) for referral to the Attorney General in accordance with FAR subpart 3.3.

[49 FR 8837, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

Subpart 1503.4—Contingent Fees

1503.408 Evaluation of the SF 119.

1503.408–1 Responsibilities.

The Contracting Officer's documentation of the evaluation of the Standard Form 119, Statement of Contingent or Other Fees, conclusions, and any proposed actions shall be reviewed by the RAD in coordination with legal counsel.

[49 FR 8837, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

1503.409 Misrepresentations or violations of the covenant against contingent fees.

EPA personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentations, or violations of the Covenant Against Contingent Fees shall report the matter promptly to the Inspector General through the RAD.

[49 FR 8837, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

Subpart 1503.5—Other Improper Business Practices

1503.502 Subcontractor kickbacks.

The Contracting Officer shall report suspected violations of the Anti-Kickback Act to the Inspector General through the RAD.

[49 FR 8837, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

Subpart 1503.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

1503.600–70 Scope of subpart.

This subpart implements and supplements FAR subpart 3.6 and sets forth EPA policy and procedures for identifying and dealing with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former EPA employees. This subpart does not apply to agreements with other departments or agencies of the Federal Government, nor to contracts awarded to State or local units of Government.

1503.600–71 Definitions.

(a) *Regular employee* means any officer or employee of EPA who is employed or appointed, with or without compensation, to serve more than 130 days during any period of 365 consecutive days, including regular officers of the Public Health Service Commissioned Corps and reserve officers of the Public Health Service Commissioned Corps while on active duty.

(b) *Special employee* means an officer or employee of EPA who is retained, designated, appointed or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis for not more that 130 days during any period of 365 consecutive days and who actually served more than 60 days during such 365-day period.

1503.601 Policy.

(a) No contract may be awarded without competition to a former regular or special EPA employee (or to a business concern or other organization owned or substantially owned or controlled by a former employee) whose employment terminated within 365 calendar days before submission of a proposal to EPA.

(b) No contract shall be awarded without competition to a firm which employs, or proposes to employ, a current regular or special EPA employee or a former EPA regular or special employee whose employment terminated within 365 calendar days before submission of a proposal to EPA, if either of the following conditions exits:

(1) The current or former EPA regular or special employee is or was involved in development or negotiating the proposal for the prospective contractor.

(2) The current or former EPA regular or special employee will be involved directly or indirectly in the management, administration, or performance of the contract.

1503.602 Exceptions.

(a) The Assistant Administrator for Administration and Resources Management may authorize an exception, in writing, to the policy in FAR 3.601 and 1503.601 of this chapter for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, or EPA regulations at 40 CFR part 3. The Assistant Administrator shall consult with the Designated Agency Ethics Official before authorizing any exceptions.

(b) This subpart does not apply to subcontracts, that is, agreements to undertake part of the work as an independent contractor. However, where subcontracts essentially create an "employer-employee" relationship, the subpart shall apply. In determining whether such a relationship exists, the Contracting Officer shall generally be guided by the standards of Chapter 304, subchapter 1-4 of the "Federal Personnel Manual" in distinguishing between employees and independent contractors.

1503.603 Responsibilities of the contracting officer.

Before awarding a contract, the Contracting Officer shall obtain an authorization under 1503.602 for any of the reasons stated in FAR 3.603.

1503.670 Solicitation of disclosure provision.

The Contracting Officer shall insert the provision at 1552.203-70, Current/Former Agency Employee Involvement Certification, in all solicitations for sole source acquisitions.

[50 FR 14357, Apr. 11, 1985]

PART 1504—ADMINISTRATIVE MATTERS

Subpart 1504.8—Contract Files

Sec.
1504.804 Closeout of contract files.
1504.804-5 Detailed procedures for closing out contract files.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 28246, July 11, 1984, unless otherwise noted.

Subpart 1504.8—Contract Files

1504.804 Closeout of contract files.

1504.804-5 Detailed procedures for closing out contract files.

In addition to those procedures set forth in FAR 4.804-5, the contracting office shall, before final payment is made under a cost reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred should be obtained from the Office of Audit through the cost advisory group at the contracting office in the form of a final audit report. Similar verification of actual costs shall be made for other contracts when cost incentives, price redeterminations, or cost-reimbursement elements are involved. Termination settlement proposals shall be submitted to the cost advisory group at the contracting office for review by the Office of Audit as prescribed by FAR 49.107. All such audits will be coordinated through the cost advisory group in the contracting office. Exceptions to these procedures are the quick close-out procedures as described in 1542.708 and Unit 2 of the EPA Acquisition Handbook.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1505—PUBLICIZING CONTRACT ACTIONS

Sec.
1505.000 Scope of part.

Subpart 1505.2—Synopses of Proposed Contract Actions

1505.202 Exceptions.
1505.203 Publicizing and response time.
1505.270 Use of synopses to perform market surveys.
1505.271 Publicizing orders under GSA Schedule Contracts.

Subpart 1505.4—Release of Information

1505.401 General.
1505.405 Exchange of acquisition information.

Subpart 1505.5—Paid Advertisement

1505.502 Authority.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8836, Mar. 8, 1984, unless otherwise noted.

1505.000 Scope of part.

This part provides instructions on publicizing contract opportunities and response time, instructions on information to include in the synopses of proposed contracts, instructions on publicizing orders under GSA schedule contracts, policy references relative to release of information, and procedures for obtaining information on previous Government contracts.

[50 FR 14357, Apr. 11, 1985]

Subpart 1505.2—Synopses of Proposed Contract Actions

SOURCE: 50 FR 14357, Apr. 11, 1985, unless otherwise noted.

1505.202 Exceptions.

(a) The contracting officer need not submit the notice required by FAR 5.201 when the contracting officer determines in writing that the contract is for the services of experts for use in preparing or prosecuting a civil or criminal action under the Superfund Amendments and Reauthorization Act of 1986.

(b) The Head of the Contracting Activity (HCA) is delegated the authority to make the written determination in FAR 5.202(b).

[53 FR 31871, Aug. 22, 1988]

1505.203 Publicizing and response time.

(a) The Contracting Officer may, at his/her discretion under certain circumstances, elect to transmit a synopsis to the Commerce Business Daily (CBD) of a proposed contract action that falls within an exception to the synopsis requirement in FAR 5.202(a). For those contract actions, the Contracting Officer may provide for a lesser time period than the 15 days required by FAR 5.203(a) and the 30 days required by FAR 5.203 (b) or (c), and the 45 days required by FAR 5.203(d). The Contracting Officer must identify the basis for the lesser time periods for response in the synopsis.

(b) The authority for paragraph (a) does not extend to the synopsis of contract actions falling within the exception in FAR 5.202(a)(7), if to do so would disclose the originality of thought or innovativeness of the proposed research.

1505.270 Use of synopses to perform market surveys.

(a) Market surveys shall be used in justifying sole source acquisitions and acquisitions using other than full and open competitive procedures with a potential value in excess of $25,000. The synopsis of such acquisitions for supplies or services and subsequent evaluation of the responses by the Government constitutes an acceptable market survey.

(b) The synopsis of a proposed sole source acquisition and acquisitions using other than full and open competition of $10,000 or more must contain sufficient detail to permit the Contracting Officer to perform an evaluation of the responses to the synopsis. As a minimum the synopsis shall include:

(1) The information required by FAR 5.207;

(2) A clear statement of the supplies or services being acquired;

(3) Required contractor capabilities, experience, and any other factors salient to the requirement; and

(4) Criteria listed in relative order of importance to be used in the evaluation of responses. (Contracting Officers may include specific weights assigned to each criteria).

(c) Contracting Officers are not required to perform market surveys to justify an other than full and open acquisition resulting from an unsolicited research proposal if to do so would disclose the originality of thought or innovativeness of the proposal.

1505.271 Publicizing orders under GSA Schedule Contracts.

(a) Contracting Officers are not required to synopsize orders placed under Federal Supply Schedules when following the procedures in FAR 8.404-2 and 8.405-1. Contracting Officers need synopsize orders under Automatic Data Processing and Teleprocessing Services Program schedules only if required by the Federal Information Resources Management Regulation.

(b) Sole source orders of $10,000 or more under the Federal Supply Schedule must be synopsized in accordance with FAR part 5.

Subpart 1505.4—Release of Information

1505.401 General.

The Freedom of Information Act, 5 U.S.C. 552, provides that, with certain exceptions, Government records shall be made available to the public upon request. This Act has been implemented by the Environmental Protection Agency in 40 CFR part 2 (5 U.S.C. 301).

1505.405 Exchange of acquisition information.

Contracting Officers shall insert the solicitation provision at 1552.214-70 and 1552.215-72, Past Performance, to obtain information on previous Government contracts or subcontracts.

Subpart 1505.5—Paid Advertisement

1505.502 Authority.

Authority to approve publication of paid advertisements in newspapers has been delegated to those Contracting Officers whose contracting officer warrant specifically grants them this authority.

PART 1506—COMPETITION REQUIREMENTS

Sec.
1506.000 Scope of part.

Subpart 1506.2—Full and Open Competition After Exclusion of Sources

1506.202 Establishing or maintaining alternative sources.

Subpart 1506.3—Other Than Full and Open Competition

1506.301 Policy.
1506.302 Circumstances permitting other than full and open competition.
1506.302-1 Only one responsible source.
1506.302-5 Authorized or required by statute.
1506.303 Justifications.
1506.303-2 Content.
1506.370 Limited competition.
1506.371 Conduct of market surveys.
1506.372 Class justification.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 50 FR 14357, Apr. 11, 1985, unless otherwise noted.

1506.000 Scope of part.

This part implements FAR part 6. It prescribes the Environmental Protection Agency policies and procedures in obtaining full and open competition in the acquisition process.

Subpart 1506.2—Full and Open Competition After Exclusion of Sources

1506.202 Establishing or maintaining alternative sources.

The Responsible Associate Director (RAD) is delegated the authority to make the determination and finding as stated in FAR 6.202(b)(1).

[50 FR 14357, Apr. 11, 1985, as amended at 55 FR 24579, June 18, 1990]

Subpart 1506.3—Other Than Full and Open Competition

1506.301 Policy.

In the fulfillment of national policy, acquisitions by EPA shall be conducted utilizing full and open competition with all responsible sources. However, it is recognized that one or more of the circumstances in FAR 6.302 may apply where it is in the interest of the Government and EPA to solicit limited sources or only one source. In such instances, the initiating program office may recommend that the supplies or services be obtained from a limited number of sources or only from one source. This recommendation is subject to review and approval as provided in FAR 6.304.

1506.302 Circumstances permitting other than full and open competition.

The exceptions in FAR 6.302 apply to all EPA acquisitions of supplies or services in excess of $1,000 unless exempted by FAR 6.001. For acquisitions awarded using small purchase procedures, Contracting Officers shall refer to 1513.170 for applicable policies and procedures.

1506.302-1 Only one responsible source.

The authority in FAR 6.302-1 may be used in the following situation, provided the synopsis requirements in FAR 5.201 and the justification requirements in FAR 6.303 are met. (This situation is an example and is not intended to be all-inclusive.) Follow-on contracts for services that represent a continuation of a previous effort performed by the proposed source as a result of a competitive acquisition may be deemed to be available only from that source when it is likely that award to any other source would result in (a) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (b) unacceptable delays in fulfilling the Agency's requirements.

1506.302-5 Authorized or required by statute.

(a) *Authority.* Section 109(e) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) is cited as authority.

(b) *Application.* (1) The contracting officer may use other than full and open competition to acquire the services of experts for use in preparing or prosecuting a civil or criminal action under SARA whether or not the expert is expected to testify at trial. The contracting officer need not prepare the written justification under FAR 6.303 when acquiring expert services under the authority of section 109(e) of SARA. The contracting officer shall document the official contract file when using this authority.

(2) The contracting officer shall give notice to the Agency's Competition Advocate whenever a contract award is made using other than full and open competitition under this authority. The notice shall contain a copy of the contract and the summary of negotiations.

[53 FR 31872, Aug. 22, 1988]

1506.303 Justifications.

1506.303-2 Content.

The documentation requirements in this section apply only to acquisitions processed using other than small purchase procedures. (Refer to 1513.170 for documentation for small purchase acquisitions).

(a) The initiating office shall prepare a written justification for other than full and open competition (JOFOC) that documents the facts and circumstances substantiating the infeasibility of full and open competition for each recommended limited sources or sole source acquisition when required by FAR 6.302.

(b) The recommendation shall be entitled "Justification for Other Than Full and Open Competition" and shall be signed at the programmatic Division Director or comparable office level prior to submission with the procurement request. The JOFOC shall contain the information prescribed in FAR 6.303-2 (a) and (b).

(c) If unusual and compelling urgency (see FAR 6.303-2) is a basis for the JOFOC, then the following applies. Explain the circumstances that led to the need for an urgent contractual action. Explain why the requirement could not have been processed in sufficient time to permit full and open competition. It should be noted that the existence of legislation, court order, or Presidential mandate is not, of itself, a sufficient basis for a JOFOC. However, the circumstances necessitating legislation, court order, or Presidential mandate may justify contractual action on an other than full and open competition basis.

(d) If the proposed acquisition has been synopsized in accordance with the applicable requirements in FAR subpart 5.2, the Contracting Officer must incorporate the evaluation of responses to the synopsis in the JOFOC. (See 1506.371(d) for contents of the evaluation document).

[50 FR 14357, Apr. 11, 1985; 50 FR 15425, Apr. 18, 1985]

1506.370 Limited competition.

Limited competition, i.e. the use of competitive procedures that are not full and open competition and that restrict the number of sources solicited, must be justified under one of the authorities in FAR 6.302. The use of limited competition requires the justification set forth in FAR 6.303. Limited competition requires the solicitation of offers from as many potential sources as is practicable under the circumstances.

1506.371 Conduct of market surveys.

(a) The Contracting Officer shall determine the extent of any market survey. In making this decision, the Contracting Officer may consider such factors as the type and size of the acquisition, the results of recent competitive acquisitions for similar supplies or services, or other recent market surveys.

(b) The Contracting Officer, with input from the Project Officer, shall determine the market survey strategy and who is responsible for accomplishing the different aspects of the survey. For example, the Contracting Officer may choose to have discussions with offerors who had proposed on previous similar requirements. For market surveys involving discussions with or inquiries from commercial firms, the Contracting Officer shall conduct or participate in such discussions or inquiries.

(c) Commerce Business Daily (CBD) synopses of proposed sole source acquisitions or acquisitions using other than full and open competition and subsequent evaluation of the responses by EPA constitute an acceptable market survey. If the FAR requires a synopsis, other methods of conducting market surveys may not be used as a substitute for the synopsis.

(d) Under those circumstances when synopses are issued to assist in determining the existence of competition, the Contracting Officer, with the assistance of the Project Officer, shall evaluate responses to such synopses in accordance with the general criteria included in the synopsis. If the evaluation indicates that full and open competition can be provided for, the Contracting Officer shall issue a new synopsis and a competitive solicitation that adhere to the time periods in FAR 5.203. If the Contracting Officer determines, after evaluation of responses, that a sole source acquisition or limited competition should be conducted, the evaluation document shall be incorporated in the JOFOC for review in accordance with 1506.303-2(d) (for small purchases see 1513.170-1). The documentation shall include:

(1) A copy of the CBD synopsis;

(2) A listing of respondees to the synopsis;

(3) A written evaluation of the responses; and

(4) The basis for the Contracting Officer's conclusion that full and open competition is impractical.

[50 FR 14357, Apr. 11, 1985; 50 FR 15425, Apr. 18, 1985]

1506.372 Class justification.

Appendix I to 48 CFR Chapter 15 contains a class justification authorizing Agency Contracting Officers to make acquisitions from the Federal Prison Industries and the Government Printing Office. Individual justifications for acquisitions from these two sources are not required.

PART 1508—REQUIRED SOURCES OF SUPPLY

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8838, Mar. 8, 1984, unless otherwise noted.

Subpart 1508.8—Acquisition of Printing and Related Supplies

1508.870 Contract clause.

Contracting Officers shall insert the contract clause at 1552.208-70, Printing, in all contracts which require printing, duplication, binding, reproduction, and related services and are subject to the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

PART 1509—CONTRACTOR QUALIFICATIONS

Sec.
1509.000 Scope of part.

Subpart 1509.1—Responsible Prospective Contractors

1509.105 Procedures.
1509.105-2 Determinations and documentation.
1509.105-3 Disclosures of preaward information.

Subpart 1509.170—Contractor Performance Evaluations

1509.170-1 Scope of subpart.
1509.170-2 Applicability.
1509.170-3 Purpose.
1509.170-4 Procedures.

Subpart 1509.4—Debarment, Suspension, and Ineligibility

1509.403 Definitions.
1509.404 Consolidated list of debarred, suspended, and ineligible contractors.
1509.406 Debarment.
1509.406-3 Procedures.
1509.407 Suspension.
1509.407-3 Procedures.

Sec.

Subpart 1509.5—Organizational Conflicts of Interest

1509.500 Scope of subpart.
1509.502 Applicability.
1509.503 Waiver.
1509.505-4 Obtaining access to proprietary information.
1509.506 Information sources.
1509.507 Procedures.
1509.508 Solicitation provision and contract clause.
1509.509 Examples.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8839, Mar. 8, 1984, unless otherwise noted.

1509.000 Scope of part.

This part implements FAR part 9 and provides policy and procedures pertaining to contractor's responsibility; debarment, suspension, and ineligibility; and organizational conflicts of interest.

Subpart 1509.1—Responsible Prospective Contractors

1509.105 Procedures.

1509.105-2 Determinations and documentation.

Where the Contracting Officer makes a determination that a Contractor is not responsible and the determination is based totally or in part on factors which are also cause(s) for debarment or suspension under FAR subpart 9.4, the Contracting Officer shall report the information as prescribed in 1509.406-3 and 1509.407-3.

1509.105-3 Disclosures of preaward information.

The Freedom of Information Act, 5 U.S.C. 552, provides that, with certain exceptions, Government records shall be made available to the public upon request. This Act has been implemented by the Environmental Protection Agency in 40 CFR part 2. subpart B, Confidentiality of Business Information, of 40 CFR part 2 provides the policy and guidance pertaining to the treatment of confidential business information submitted by prospective Contractors.

Subpart 1509.170—Contractor Performance Evaluations

1509.170-1 Scope of subpart.

This subpart establishes EPA policy and procedures for evaluation of contractor performance.

1509.170-2 Applicability.

The provisions of this subpart apply to: (a) All contracts for research and development and for services other than management consulting services when the contract amount is $25,000 and above, and (b) all contracts for management consulting services, without regard to dollar value. FAR 36.201 and 36.604 provide detailed instructions for conduct of construction and architect-engineering Contractor performance evaluation.

1509.170-3 Purpose.

The purpose of this subpart is to: (a) Provide an orderly and uniform method of determining and recording the effectiveness of contractors in meeting contractual obligations; (b) emphasize to contractors the importance of satisfying contractual obligations; (c) create within the EPA a record of contractor performance and a means for considering this record in future acquisition actions; and (d) provide a system for identifying contractors with a history of poor performance.

1509.170-4 Procedures.

(a) *Use and preparation of forms.* EPA Form 1900-26, Contracting Officer's Evaluation of Contractor Performance, and EPA Form 1900-27, Project Officer's Evaluation of Contractor Performance, shall be prepared at the completion of the technical effort of the contract or purchase order to record the effectiveness of contractors in meeting contractual obligations. Forms shall be prepared in accordance with the instructions printed on the back of each form.

(b) *Responsibilities for preparation of forms.*

(1) The Contracts Management Division shall originate EPA Form 1900-26 and EPA Form 1900-27 within two weeks after the completion of the technical effort of the contract or purchase order.

(2) The Contracting Officer administering the contract shall prepare the business evaluation on EPA Form 1900-26; forward the original of the form to the Quality Assurance Section, Procurement and Contracts Management Division (PM-214), Washington, DC 20460; and retain a copy in the contract file.

(3) The Project Officer with technical responsibility for the contract shall prepare the technical evaluation on EPA Form 1900-27; forward the form to the Quality Assurance Section, Procurement and Contracts Management Division (PM-214), Washington, DC 20460; and forward a copy to the Contracting Officer for insertion in the contract file.

(c) *Unsatisfactory performance ratings.* The Contracting Officer shall apprise the Contractor of any overall rating of "unsatisfactory." If the Contractor submits comments in response to such a rating, the evaluator shall include the comments as an attachment to the evaluation form. Evaluators shall make appropriate changes to the performance evaluations if any are warranted by the Contractor's comments.

(d) *Review of evaluations.* The Quality Assurance Section, PCMD, shall review each evaluation as it is received, and compare it with recent evaluations submitted for the same Contractor. If the Quality Assurance Section discerns a pattern of unsatisfactory performance, it will notify the appropriate Contracting Officer for his/her possible action, which may include referral of the matter in accordance with 1509.406-3(a)(1).

(e) *Filing of forms.* Evaluation forms shall be filed in the Contractor performance evaluation files maintained by the Quality Assurance Section, Procurement and Contracts Management Division.

(f) *Release of ratings.* Information on Contractors' performance ratings may be obtained by contacting the Quality Assurance Section. Contractors' performance ratings determined by the Contracting Officer and the Project Officer may be released to other Government agencies at their specific written request, and on condition that the information will not be made available outside of the Government. Requests for information on the ratings from individuals or entities outside of the Government shall be processed in accordance with the Freedom of Information Act and 40 CFR part 2.

[49 FR 8839, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

Subpart 1509.4—Debarment, Suspension, and Ineligibility

1509.403 Definitions.

The Director, Grants Administration Division, is designated the "debarring official" and the "suspending official" as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405-1(b), 9.405-2, 9.406-1(c), and 9.407-1(d).

1509.404 Consolidated list of debarred, suspended, and ineligible contractors.

The Director, Grants Administration Division (or designee) is responsible for notifying GSA in accordance with FAR 9.404(c).

1509.406 Debarment.

1509.406-3 Procedures.

(a) *Investigation and referral*—(1) *Contracting Officer responsibility.* (i) When contracting personnel discover information which indicates that a cause for debarment or suspension may exist, they shall promptly report such information by memorandum to the cognizant Chief of the Contracting Office. Purchasing agents in the small purchase activities which do not come under the cognizance of the Headquarters, Research Triangle Park (RTP), or Cincinnati contracting offices shall report such information by memorandum directly to the Head of the Contracting Activity (HCA).

(ii) Contracting Officers shall review the GSA consolidated list to ensure that the Agency does not solicit offers from, award contracts to, or consent to subcontract with listed contractors.

(2) *Chief of the Contracting Office responsibility.* When the Chief of the Contracting Office determines that sufficient information exists to support the reasonable belief that a cause for debarment or suspension may exist, such information shall be promptly reported by memorandum to the HCA. The memorandum to the HCA may be a cover memorandum which forwards the Contracting Officer's memorandum and provides the Chief of the Contracting Office's assessment of the information, any investigative report or audit, and any additional information he/she has discovered.

(3) *HCA responsibility.* Upon receipt of a report of a suspected debarment or suspension situation, the HCA or the designee shall take the following actions:

(i) Notify the Debarring Official that investigation of a potential debarment has been initiated.

(ii) Review the reported information.

(iii) Investigate as necessary to verify or develop additional information. Request investigative support from the EPA Inspector General when appropriate.

(iv) Refer the matter to the Debarring Official for consideration of debarment; or recommend to the Debarring Official that the matter be closed without further action because the facts do not constitute a cause for debarment.

(v) Obtain legal counsel's opinion on referrals or recommendations made to the Debarring Official.

(vi) Notify EPA Contracting Officers of those Contractors who are ineligible for solicitation, award, or subcontracting but who do not appear on the GSA Consolidated List; e.g., those who are ineligible based on a settlement reached by the Debarring Official under which the Contractor has agreed to voluntarily exclude itself from participation in Government contracting/subcontracting for a specified period or because of a Notice of Proposal to Debar.

(4) *Debarring Official's responsibility.* The Debarring Official shall:

(i) Review referrals from the HCA together with the HCA's recommendations, if any, and determine whether further consideration by the Debarring Official is warranted and take such actions as are required by FAR subpart 9.4;

(ii) Obtain the HCA's recommendation prior to reaching a voluntary exclusion settlement with a Contractor in lieu of debarment;

(iii) Promptly notify the HCA of Contractors with whom a settlement in lieu of debarment has been reached under which the Contractor voluntarily excludes itself from or restricts its participation in Government contracting/subcontracting for a specified period; and of Contractors who have received a Notice of Proposal to Debar.

1509.407 Suspension.

1509.407-3 Procedures.

The procedures prescribed in 1509.406-3(a) shall be followed under conditions which appear to warrant suspension of a Contractor.

Subpart 1509.5—Organizational Conflicts of Interests

1509.500 Scope of subpart.

This subpart establishes EPA policy and procedures for identifying, evaluating, and resolving organizational conflicts of interest. EPA's policy is to avoid, neutralize, or mitigate organizational conflicts of interest. If EPA is unable to neutralize or mitigate the effects of a potential conflict of interest, EPA will disqualify the prospective contractor or will terminate the contract when potential or actual conflicts are identified after award.

[49 FR 8839, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1509.502 Applicability.

This subpart applies to all EPA contracts except agreements with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

1509.503 Waiver.

The Assistant Administrator for Administration and Resources Management may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in accordance with FAR 9.503. The Assistant General Counsel for Contracts and Information Law shall be consulted on such waiver requests.

1509.505-4 Obtaining access to proprietary information.

Contractors gaining access to confidential business information of other companies in performing advisory services for EPA shall comply with the special requirements of 40 CFR part 2 and the provisions of their contracts relating to the treatment of confidential business information.

1509.506 Information sources.

(a) *Disclosure.* Prospective EPA Contractors responding to solicitations or submitting unsolicited proposals shall provide information to the Contracting Officer for use in identifying, evaluating, or resolving potential organizational conflicts of interest. The submittal may be a certification or a disclosure, pursuant to paragraph (a) (1) or (2) of this section.

(1) If the prospective contractor is not aware of any information bearing on the existence of any organizational conflict of interest, it may so certify.

(2) Prospective contractors not certifying in accordance with paragraph (a)(1) of this section must provide a disclosure statement which describes concisely all relevant facts concerning any past, present, or planned interests relating to the work to be performed and bearing on whether they, including their chief executives, directors, or any proposed consultant or subcontractor, may have a potential organizational conflict of interest.

(b) *Failure to disclose information.* Any prospective contractor failing to provide full disclosure, certification, or other required information will not be eligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations, EPA will consider any inadvertent failure to provide disclosure certification as a "minor informality" (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

(c) *Exception.* Where the Contractor has previously submitted a conflict of interest certification or disclosure for a contract, only an update of such statement is required when the contract is modified.

1509.507 Procedures.

(a) The Contracting Officer shall document in writing the resolution of any potential or actual conflicts of interest identified. This documentation shall be reviewed and approved by the Head of the Contracting Activity (HCA) prior to award. If the organizational conflict of interest cannot be resolved by any other means, the Contracting Officer shall disqualify the prospective contractor from receiving the contract award.

(b) The Director, Office of Administration shall review and make the final decision on any Contractor request for higher review of the Contracting Officer's decision as prescribed in FAR 9.507(c)(4).

1509.508 Solicitation provision and contract clause.

(a) *Advance notice of limitations.* The Contracting Officer shall alert prospective contractors by placing a notice in the solicitation whenever a particular acquisition might create an organizational conflict of interest. The notice will:

(1) Include the information prescribed in FAR 9.508-1;

(2) Refer prospective contractors to this subpart; and

(3) Require proposers to disclose relevant facts concerning any past, present, or currently planned interests relating to the work described in the solicitation.

(b) *Required solicitation provision.* Except in solicitations where the Organizational Conflict of Interest provision is geared toward the particular acquisition (see 1509.508(a)), the Contracting Officer shall include in all solicitations the provisions at 1552.209-70 and 1552.209-72. The provision is optional in solicitations for small purchases.

(c) *Required contract clause.* The Contracting Officer shall include the clause in 1552.209-71, in all contracts over $10,000, and, as appropriate, in small purchases. However, the Contracting Officer need not include this clause when a specific clause is developed as prescribed in FAR 9.508-2.

1509.509 Examples.

The examples in the following paragraphs (a) through (e) illustrate situations concerning organizational conflicts of interest (OCI) considered typical of those which might be encountered in EPA contracts. While more than one OCI may exist in the situations described in the examples, the discussion is limited so as to demonstrate a specific conflict. The examples are not all inclusive but are intended to help in applying the general rules in FAR subpart 9.5 and 1509.5.

(a) Company A, in response to a Request for Proposals (RFP), proposes to undertake certain analyses of an air emission control device. In response to the inquiry in the RFP, Company A advises that it is currently performing similar analyses for the manufacturer of the device. Normally this would constitute an OCI and a contract for that particular work would not be awarded to Company A. The company would be placed in a position in which its judgment could be biased in relation to its work for EPA. Since other well-qualified sources are available, there would be no basis for granting a waiver of the policy.

(b) Company A, in response to an RFP, proposes to undertake an economic analysis of one segment of the chemical industry. Company A advises that it derives a substantial portion of its income from the industry to be studied. Normally this would constitute an OCI and a contract would not be awarded to Company A. It would be placed in a position in which its judgment could be biased in relation to its work for EPA. Should award be made to Company A, the appearance of an OCI could undermine the credibility of the data generated under the contract and render such data useless for its intended purpose, regardless of whether any bias is actually reflected in the data.

(c) Company A receives a contract to define the detailed performance characteristics EPA will require for the purchase of automobile emission analysis equipment. Company A has not developed the particular equipment. At the time the contract is awarded, it is clear to both parties that the performance characteristics defined will be used by EPA to choose competitively a Contractor to develop or produce the equipment. Normally this would constitute an OCI and Company A should not be permitted to propose on the follow-on procurement.

(d) Company A is selected to study possible methods for disposal of toxic substances. The Agency intends to ask that firms doing research in the field make proprietary information available to Company A. The contract must require Company A to protect any proprietary information it receives, to refrain from using the information for any purpose other than that for which it was intended, and to otherwise comply with the requirements of 40 CFR part 2 and the provisions of its contract relating to the treatment of confidential business information.

(e) Company A, in response to an RFP, proposes to perform inspections for EPA. The inspections are to determine if companies are meeting Federal requirements for limiting discharge of pollutants into the air. Company A plans to act as a consultant to the companies to be inspected. Company A should be prohibited in the contract from acting as a consultant to any of the companies being inspected during the contract period of performance and for a reasonable period thereafter.

[49 FR 8839, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

PART 1510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
1510.007 Deviations.
1510.011 Solicitation provisions and contract clauses.
1510.011-70 Reports of work.
1510.011-71 Monthly progress report—short form.
1510.011-72 Monthly progress report—cost-type contract.
1510.011-73 Monthly progress report—time and materials or labor hour, contract.
1510.011-74 Monthly progress report—indefinite delivery/indefinite quantity fixed-rate services contract.
1510.011-75 Working files.
1510.011-76 Legal analysis.
1510.011-77 Final reports.
1510.011-78 Management consulting services.

AUTHORITY: Sec. 205(c), 63 Stat. 390; as amended, 40 U.S.C. 486(r).

SOURCE: 49 FR 8841, Mar. 8, 1984, unless otherwise noted.

1510.007 Deviations.

The Responsible Associate Director (RAD) is the designated official responsible for ensuring that Federal specifications are used and that exceptions and deviations are justified in accordance with FAR 10.007(a).

[49 FR 8841, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

1510.011 Solicitation provisions and contract clauses.

1510.011-70 Reports of work.

Contracting Officers shall insert one of the contract clauses at 1552.210-70 when the contract requires the delivery of reports. Alternate I should be used to specify reports in the contract schedule, whereas the other clause should be used when reports are specified in a contract attachment.

1510.011-71 Monthly progress report—short form.

Contracting Officers shall insert the contract clause at 1552.210-71 when monthly progress reports are required and the duration of the contract is contemplated to be less than six months.

1510.011-72 Monthly progress report—cost-type contract.

Contracting Officers shall insert the contract clause at 1552.210-72 when monthly progress reports are required and the duration of the contract is expected to exceed six months. This clause may also be used in cost-reimbursement contracts with a duration of less than six months.

1510.011-73 Monthly progress report—time and materials or labor hour contract.

Contracting Officers shall insert the clause at 1552.210-73 in all time and materials or labor hour contracts for services with a period of performance of six months or longer. The clause may also be used in these contract types when the period of performance is less than six months.

[55 FR 39622, Sept. 28, 1990]

1510.011-74 Monthly progress report—indefinite delivery/indefinite quantity fixed-rate services contract.

Contracting Officers shall insert the clause at 1552.210-74 in all indefinite delivery/indefinite quantity contracts for services with a period of performance of six months or longer. The clause may also be used in this contract type when the performance period is less than six months.

[55 FR 39622, Sept. 28, 1990]

1510.011-75 Working files.

Contracting Officers shall insert the contract clause at 1552.210-74 in all applicable EPA contracts where accurate working files on all work documentation is required in the performance of the contract.

[49 FR 8841, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990]

1510.011-76 Legal analysis.

Contracting Officers shall insert the clause at 1552-210-75 when it is determined that the contract involves legal analysis.

[49 FR 8841, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990]

1510.011-77 Final reports.

Contracting Officers shall insert the contract clause at 1552.210-76 when a contract requires both a draft and a final report.

[49 FR 8841, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990]

1510.011-78 Management consulting services.

Contracting Officers shall insert the contract clause at 1552.210-77 in all contracts for management consulting services.

[49 FR 8841, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990]

PART 1512—CONTRACT DELIVERY OR PERFORMANCE

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Source: 49 FR 8842, Mar. 8, 1984, unless otherwise noted.

Subpart 1512.1—Delivery or Performance Schedules

1512.104 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.212-70, Level of Effort, in term form contracts.

(b) The Contracting Officer shall insert the contract clause at 1552.212-71, Work Assignments, in cost-reimbursement type term form contracts when work assignments are used.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1513—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1513.1—General

Sec.
1513.106 Competition and price reasonableness.
1513.170 Competition exceptions and justification for sole source small purchase acquisitions.
1513.170-1 Contents of sole source justifications.
1513.170-2 Approval.
1513.170-3 Exceptions.

Subpart 1513.4—Imprest Fund

1513.404 Conditions for use.

Subpart 1513.5—Purchase Orders

1513.505 Purchase order and related forms.
1513.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
1513.507 Clauses.
1513.570 Oral purchase orders.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8842, Mar. 8, 1984, unless otherwise noted.

Subpart 1513.1—General

1513.106 Competition and price reasonableness.

Solicitation mailing lists shall be established and maintained by the three major contracting offices: Headquarters in Washington, DC, Cincinnati, and Research Triangle Park. Contracting personnel at regional and laboratory locations are authorized to use the lists maintained by any of these offices (see 1514.205-1).

1513.170 Competition exceptions and justification for sole source small purchase acquisitions.

1513.170-1 Contents of sole source justifications.

The program office submitting the procurement request must submit, as a separate attachment, a brief written statement in support of any sole source acquisition. The statement must cite one or more of the circumstances in FAR 6.302, and the necessary facts to support each circumstance. Although program offices may not cite the authority in FAR 6.302-7, the public interest may be used as a basis to support a sole source acquisition. If the acquisition has been synopsized as a notice of proposed sole source acquisition, the statement must include the results of the evaluation of responses to the synopsis. (See 1505.270 for contents of a synopsis of a proposed sole source acquisition).

[50 FR 14359, Apr. 11, 1985]

1513.170-2 Approval.

The Contracting Officer is the approving official for all sole source acquisitions processed using small purchase procedures.

[50 FR 14359, Apr. 11, 1985]

1513.170-3 Exceptions.

A written justification is not required for the following types of acquisitions: (a) Acquisitions under mandatory Federal Supply Schedule or mandatory ADP and TSP schedules; and (b) acquisitions required by statute to be obtained from a specific source, such as the National Industries for the Blind or Other Severely Handicapped or Federal Prison Industries.

[50 FR 14359, Apr. 11, 1985]

Subpart 1513.4—Imprest Fund

1513.404 Conditions for use.

Imprest funds may be used for small purchases when the transaction does not exceed $250 ($500 under emergency conditions).

Subpart 1513.5—Purchase Orders

1513.505 Purchase order and related forms.

1513.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Contracting Officers may use the EPA Form 1900-8, Procurement Request/Order, in lieu of Optional Forms 347 and 348 for individual purchases prepared in accordance with the instructions printed on the reverse thereof (see 1553.213-70).

1513.507 Clauses.

(a) It is the general policy of the Environmental Protection Agency that Contractor or vendor prescribed leases or maintenance agreements for equipment shall not be executed.

(b) The Contracting Officer shall, where appropriate, insert the clause at 1552.213-70, Notice to Suppliers of Equipment, in orders for purchases or leases of automatic data processing equipment, word processing, and similar types of commercially available equipment for which vendors, as a matter of routine commercial practice, have developed their own leases and/or customer service maintenance agreements.

1513.570 Oral purchase orders.

(a) Contracting Officers are authorized to issue oral purchase orders for supplies or services whose estimated value is $10,000 or less. Oral purchase orders may be used only where all of the following conditions are present:

(1) Supplies or services (including construction) are readily available.

(2) Detailed specifications or complex terms and conditions are not required.

(3) The vendor is willing to furnish the supplies/services on the basis of an oral order.

(4) The vendor has been advised orally of FAR/EPAAR contract clauses which are applicable.

(b) In addition to documenting the existence of the conditions prescribed in (a) above, the following actions must also be completed:

(1) The Procurement Request/Order must be annotated to indicate the date and number of the order, the supplier, the dollar value, and the delivery and discount terms.

(2) The annotated Procurement Request/Order must be retained in the purchase order file and copies provided to the originator of the procurement request, the commitment clerk, the paying office, the property office, and the shipping/receiving office.

PART 1514—SEALED BIDDING

Sec.
1514.000 Scope of part.

Subpart 1514.2—Solicitation of Bids

1514.201 Preparation of invitations for bids.
1514.201-6 Solicitation provisions.
1514.201-7 Contract clauses.
1514.205 Solicitation mailing lists.
1514.205-1 Establishment of lists.
1514.205-5 Release of solicitation mailing lists.

Subpart 1514.4—Opening of Bids and Award of Contract

1514.404 Rejection of bids.
1514.404-1 Cancellation of invitations after opening.
1514.406 Mistakes in bids.
1514.406-3 Other mistakes disclosed before award.
1514.406-4 Mistakes after award.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8843, Mar. 8, 1984, unless otherwise noted.

1514.000 Scope of part.

This part implements and supplements FAR part 14 by providing additional guidance regarding the development of lists of qualified bidders, including small and disadvantaged business sources, and by requiring additional information from bidders that will be used in evaluating bids for award.

Subpart 1514.2—Solicitation of Bids

1514.201 Preparation of invitations for bids.

1514.201-6 Solicitation provisions.

(a) The Contracting Officer shall insert the solicitation provision at 1552.214-70, Past Performance, in all invitations for bids.

(b) The Contracting Officer shall insert the solicitation provision at 1552.214-71, Contract Award-Other Factors-Sealed Bidding, in invitations for bids when it is appropriate to describe other factors that will be used in evaluating bids for award.

[50 FR 14359, Apr. 11, 1985]

1514.201-7 Contract clauses.

The Responsible Associate Director (RAD) is authorized to waive the inclusion of the clauses at FAR 52.214-27 and 52.214-28, in accordance with FAR 14.201-7.

[55 FR 24579, June 18, 1990]

1514.205 Solicitation mailing lists.

1514.205-1 Establishment of lists.

(a) Within EPA, solicitation mailing lists shall be established and maintained by the three major contracting offices: Headquarters in Washington, DC, Cincinnati, and Research Triangle Park to provide for the maximum number of qualified sources in solicitations consistent with the nature of supplies or services to be acquired. Contracting personnel at regional and laboratory locations are authorized to use the lists maintained by any of these offices.

(b) It is the policy of EPA to use the Small Business Administration (SBA) procurement automated source system (PASS) for identification of small business and small disadvantaged business sources. PASS is capable of identifying businesses that are small, disadvantaged, women-owned, in labor surplus areas, and by geographic location or any combination thereof.

(c) Identification of sources through PASS or the solicitation mailing list does not negate the requirement for the Contracting Officer to synopsize the acquisition in accordance with FAR 5.201.

(d) For motion picture and videotape production requirements, the Department of Defense (DOD) Directorate for Audiovisual Management Policy, 1117 North 19th Street, Room 601, Arlington, Virginia 22209, is the Executive Agent responsible for maintaining a Qualified Film Producers List and a Qualified Videotape Producers List. When a requirement arises, the Contracting Officer shall notify the Executive Agent who will furnish the names of vendors in increments of five on a rotational basis. The Contracting Officer shall provide a copy of the solicitation to the Executive Agent.

1514.205-5 Release of solicitation mailing lists.

EPA installations shall make the solicitation mailing list, established under 1514.205-1, available to the public and Contractors during normal business hours.

Subpart 1514.4—Opening of Bids and Award of Contract

1514.404 Rejection of bids.

1514.404-1 Cancellation of invitations after opening.

The RAD is authorized to make the determination in FAR 14.404-1(c), after consultation with legal counsel.

[55 FR 24579, June 18, 1990]

1514.406 Mistakes in bids.

1514.406-3 Other mistakes disclosed before award.

The Head of the Contracting Activity (HCA) is delegated the authority to make the administrative determinations in connection with mistakes in bids prior to award. This authority may not be redelegated. The legal counsel must review and concur with the determination.

1514.406-4 Mistakes after award.

The Chief of the Contracting Office is authorized to make determinations on mistakes in bids disclosed after award. The legal counsel must review and concur with the determination.

PART 1515—CONTRACTING BY NEGOTIATION

Sec.
1515.000 Scope of part.

Subpart 1515.4—Solicitation and Receipt of Proposals and Quotations

1515.403 Solicitation mailing lists.
1515.407 Solicitation provisions.
1515.413 Disclosure and use of information before award.

Subpart 1515.5—Unsolicited Proposals

1515.506 Agency procedures.
1515.507 Contracting methods.

Sec.

Subpart 1515.6—Source Selection

1515.600 Scope of subpart.
1515.602 Applicability.
1515.603 Purpose.
1515.604 Responsibilities and duties.
1515.604-70 Personal conflicts of interest.
1515.605 Evaluation factors.
1515.608 Proposal evaluation.
1515.609 Competitive range.
1515.610-70 Limited discussions vs full negotiations.
1515.611 Best and final offers.
1515.612 Formal source selection.

Subpart 1515.8—Price Negotiation

1515.804 Cost or pricing data.
1515.804-3 Exemptions from a waiver of submission of certified cost or pricing data.

Subpart 1515.9—Profit

1515.900 Scope of subpart.
1515.902 Policy.
1515.905 Profit-analysis factors.
1515.970 EPA structured approach for developing profit or fee objectives.
1515.970-1 General.
1515.970-2 EPA structured system.
1515.970-3 Documentation.

Subpart 1515.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1515.1003 Debriefing of unsuccessful offerors.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8843, Mar. 8, 1984, unless otherwise noted.

1515.000 Scope of part.

This part implements and supplements FAR part 15. It prescribes the Environmental Protection Agency policies and procedures for contracting for supplies and services by negotiations.

Subpart 1515.4—Solicitation and Receipt of Proposals and Quotations

1515.403 Solicitation mailing lists.

Contracting offices shall establish, maintain, and use lists of potential sources in accordance with 1514.205-1.

1515.407 Solicitation provisions.

(a) In addition to those provisions prescribed in FAR 15.407, the Contracting Officer shall insert in negotiated solicitations the provisions at—

(1) 1552.215-72, Past Performance;

(2) 1552.215-73, Instructions for the Preparation of Technical and Cost or Pricing Proposals;

(3) 1552.215-76, General Financial and Organizational Information.

(b) The Contracting Officer shall insert the provision at 1552.215-74, Cost Proposal Instructions, in negotiated solicitations when cost or pricing data is required in an offeror's proposal and it is necessary to obtain the detailed cost data specified in the provision. While designed to obtain cost data for acquisitions under the Comprehensive Environmental Response, Compensation and Liability Act, the provision may be used in other negotiated solicitations.

[49 FR 8843, Mar. 8, 1984, as amended at 54 FR 36980, Sept. 26, 1989]

1515.413 Disclosure and use of information before award.

(a) Contracting Officers shall follow the Alternate II proposal evaluation procedures in FAR 15.413-2.

(b) After receipt of proposals, none of the information contained in them or concerning the number or identity of offerors shall be made available to the public or to anyone in the Government not having a legitimate interest. In the event an outside evaluation is to be obtained, information in proposals or information concerning the number or identity of offerors shall be disclosed only to the extent authorized by and in accordance with the procedures of FAR 15.413-2(f) and these regulations, 1515.413.

(c) During the preaward or preacceptance period of a negotiated acquisition, only the contracting officer, the contracting officer's superiors having contractual authority, and others specifically authorized shall transmit technical or other information and conduct discussions with prospective contractors. Information shall not be furnished to a prospective contractor if, alone or together with other information, it may afford the prospective contractor an advantage over others (see FAR 15.610, Written or oral discussion). However, general information that is not prejudicial to others may be furnished upon request.

(d) The Chief of the Contracting Office (CCO) is the designated official to make the decision as provided by FAR 15.413-2(f)(1).

(e) The Contracting Officer shall submit a written determination to the CCO whenever the use of FAR 15.413-2(f) procedures is contemplated. Following CCO approval, proposals may be released to non-Government employees for review and evaluation consistent with the provisions of FAR 15.413-2(f)(2)-(5).

(f) The following written certification and agreement shall be obtained from the non-Government evaluator prior to the release of any proposal to that evaluator:

CERTIFICATION ON THE USE AND DISCLOSURE OF PROPOSALS

RFP# ——————————

Offeror ——————————

1. I hereby certify that to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial, technically sound, objective review of this proposal(s) or otherwise result in a biased opinion or unfair competitive advantage.

2. I agree to use any proposal information only for evaluation purposes. I agree not to copy any information from the proposal(s), to use my best effort to safeguard such information physically, and not to disclose the contents of nor release any information relating to the proposal(s) to anyone outside of the Source Evaluation Board assembled for this acquisition or individuals designated by the Contracting Officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

——————————

(Name and Organization)

——————————

(Date of Execution)

(End of Certificate)

(g) The Contracting Officer shall place the Government Notice for Handling Proposals (FAR 15.413-2(e)) on the cover pages of all proposals upon their receipt.

[53 FR 38293, Sept. 30, 1988]

Subpart 1515.5—Unsolicited Proposals

1515.506 Agency procedures.

The Director, Grants Administration Division (PM-216), EPA, 401 M Street SW., Washington, DC 20460, is the Agency contact point established to coordinate the receipt and handling of unsolicited proposals.

1515.507 Contracting methods.

The Department of Housing and Urban Development-Independent Agencies Appropriation Act contains a requirement that none of the funds provided in the Act may be used for payment through grants or contracts to recipients that do not share in the cost of conducting research resulting from proposals that are not specifically solicited by the Government. Accordingly, contracts which result from unsolicited proposals shall provide for the Contractor to bear a portion of the cost of performance for work subject to the Act. However, where there is no measurable gain to the performing organization, cost sharing is not required.

Subpart 1515.6—Source Selection

1515.600 Scope of subpart.

This subpart establishes EPA policies and procedures for the source evaluation and selection processes in competitive negotiated acquisitions.

1515.602 Applicability.

FAR subpart 15.6 and this subpart apply to all competitive negotiated acquisitions in excess of $25,000, except architect engineering services which are covered in 1536.6.

[50 FR 14359, Apr. 11, 1985]

1515.603 Purpose.

EPA personnel shall conduct source evaluation and selection in accordance with consistent standards and procedures that ensure fair and impartial treatment of all offerors.

1515.604 Responsibilities and duties.

In addition to those cited in FAR 15.604, the following responsibilities and duties are assigned:

(a) *Source Selection Official.* The Source Selection Official (SSO) is the official responsible for overall management of the source selection process. Duties of the SSO include appointing the members and chairpersons of the Source Evaluation Board, the Technical Evaluation Panel, and the Business Evaluation Panel, and approving the solicitation document. However, the Chief of the Contracting Office (CCO) is responsible for approving amendments to solicitation documents.

(b) *Source Evaluation Board.* The Source Evaluation Board (SEB) consists of a chairperson who is responsible for all of the procedural and administrative aspects of the SEB, and other specialists, e.g., technical, procurement, and financial, as may be deemed appropriate by the SSO. An attorney from the Office of General Counsel should serve in an advisory role to the SEB. The SEB makes recommendations to the SSO on selection of a contractor for award.

(c) *Technical Evaluation Panel.* The Technical Evaluation Panel (TEP) develops the evaluation criteria and the Statement of Work for the solicitation and performs the technical evaluation of offers. All members of the TEP must review all proposals initially submitted in response to a solicitation. Unless approved in advance by the SSO, only individuals who evaluated initial proposals may evaluate revised proposals submitted after determination of the competitive range.

(d) *Business Evaluation Panel.* The Business Evaluation Panel (BEP) reviews the solicitation evaluation criteria and Statement of Work from a business perspective; evaluates the business and contractual aspects of the offerors' business proposals; and considers other factors such as responsibility of the offerors.

[49 FR 8843, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

1515.604-70 Personal conflicts of interests.

(a) Only regular or special Government employees of EPA as defined in 40 CFR 3.102, or where appropriate, other Federal Government agencies, may participate in the evaluation and selection process. In the event an outside evaluation is to be obtained, non-Government employees may participate only if the procedures in FAR 15.413-2(f) and 1515.413 are followed.

(b) Each EPA employee (including special employees) engaged in source evaluation and selection is required to be familiar with the provisions of 40 CFR part 3 regarding personal conflicts of interests. The employee shall inform the Source Selection Official in writing if his/her participation in the source evaluation and selection process could be interpreted as a possible or apparent conflict of interest. The SSO shall relieve any EPA employee who has a conflict of interest of further duties in connection with the evaluation and selection process.

[49 FR 8843, Mar. 8, 1984, as amended at 53 FR 38293, Sept. 30, 1988]

1515.605 Evaluation factors.

The evaluation factors that will be considered in making the source selection and their relative importance shall be included in "Part IV, Section M, Evaluation Factors for Award," in each solicitation.

(a) The Contracting Officer shall insert the provision in 1552.215-70, EPA Source Evaluation and Selection Procedures—Negotiated Procurements and either: (1) The provision in 1552.215-71 Evaluation Factors for Award where technical quality is more important than cost or price, or (2) the provision in Alternate I to 1552.215-71 where cost or price is more important than technical quality, provided an offeror's technical proposal meets the minimum needs of the Government.

(b) Technical evaluation criteria should be prepared in accordance with FAR 15.605 and inserted into paragraph (b) of the provision in 1552.215-71 or Alternate I to that provision.

1515.608 Proposal evaluation.

(a) The initial technical evaluations of proposals shall be conducted in accordance with the following procedures.

(1) The evaluation of technical proposals shall be accomplished using the Scoring Plan specified below, which consists of narrative qualitative descriptions to which numerical values have been assigned. These values shall be applied against the weight assigned to each technical evaluation criterion and subcriterion set forth in the solicitation. The Scoring Plan values are expressed on a scale of zero through five; each value, except "0," "3.5," and "4.5" represents a multiple of 20 percent which is to be used in determining the technical score. For example, a value of "4" applied to a particular technical evaluation criterion whose weight is 30, would result in a technical score of 24. The values used in technical proposal evaluation shall be limited to those established in the Scoring Plan.

SCORING PLAN

Value	Descriptive statement
0	The element is not addressed, or is totally deficient and without merit.
1	The element is addressed but contains deficiencies that can be corrected only by major or significant changes to relevant portions of the proposal.
2	Clarification is required. Final scoring of the element will be made following limited discussions or full negotiations, if discussions or negotiations are held with the offeror.
3	The proposal element is adequate. Overall it meets specifications. However, comments should be made on any perceived weaknesses or on areas in which an offeror could improve.
3.5 [1]	Intermediate merit.
4	The proposal element is good with some superior features.
4.5 [1]	Intermediate merit.
5	The proposal is superior in most feature.

[1] The values 3.5 and 4.5 are to be used to indicate intermediate merit. If used, the Chairperson of the Technical Evaluation Panel shall provide a narrative to explain the distinction between values 3 and 4 or values 4 and 5.

(2) *Ranking.* The assignment of numerical scores to a technical proposal establishes the relative rank of that proposal with respect to those of other offerors. The use of pre-established cut-off scores to determine the competitive range or the source to be selected is prohibited. Each member of the TEP shall independently evaluate and score each offer. The TEP Chairperson shall develop a consensus opinion on the scores assigned to each offer. The averaging of individual TEP member's scores to arrive at an overall panel score is prohibited.

(b) *Technical and business evaluation panel reports of initial offers.* The TEP and BEP shall deliver their respective reports to the Contracting Officer upon completion of the evaluation of initial offers.

(1) The TEP report shall include: (i) A detailed scoring of each offer received and a narrative summary of facts and findings of significant strengths, weaknesses, and risks associated with each offer. The narrative summary and the score must be consistent. Score sheets prepared by each individual panel member must be made available upon the Contracting Officer's request. For contracts valued at $500,000 or less, the Chairperson of the TEP may use the short form technical evaluation format (EPA Form 1900-61); and

(ii) Any interrogatories the Contracting Officer should submit to offerors to clarify their technical proposals. The Contracting Officer may review the technical proposals and TEP evaluation and submit any additional interrogatories deemed appropriate

(2) The BEP report shall include: (i) A preliminary cost evaluation of each offeror's cost proposal. The evaluation may include worksheets or a formal narrative pointing out cost elements which appear unreasonable or questionable. For level of effort contracts, the evaluation shall compare proposed costs with the cost standards specified in the solicitation (e.g., man-hours per labor category); and

(ii) A discussion of any factors which might prevent award to an offeror (e.g., appearance on a debarred/suspended list).

(3) Both the TEP and BEP reports shall also include: (i) A statement that the respective panel members are free from actual or potential personal conflicts of interest; and

(ii) Any information which might reveal that a offeror has an actual or potential organizational conflict of interest.

(c) *Technical and business evaluation reports following the competitive range determination.* (1) The Project Officer shall deliver a supplemental TEP report to the Contracting Officer at the completion of evaluation of revised proposals and prior to final selection. The supplemental report shall include, for each offeror in the competitive range:

(i) A discussion of whether or not the offerors' cost proposals adequately reflect their technical proposals and the requirements of the solicitation;

(ii) A summary evaluation of the technical aspects of each offeror's record of recent or current performance. The evaluation of past performance includes an analysis of the offeror's previous efforts to provide work of a high quality in a timely, cost-efficient manner. However, past performance is not a criterion to be scored. Where the offeror is known to have performed contracts for EPA and for other Government agencies for comparable work, those agencies should be contacted for a record of past performance and the Contracting Officer contacted for a record of past performance on EPA contracts; and

(iii) Any changes to the initial technical evaluation scores and a narrative evaluation based on discussions or negotiations and the revised technical proposal. All revised score sheets by each panel member must be included.

(2) The BEP shall deliver a supplemental BEP report to the Contracting Officer at the completion of evaluation of revised proposals and prior to final selection. The supplemental report shall include, for each offeror in the competitive range:

(i) A detailed cost analysis of the business proposal. For contracts valued at $500,000 or less, EPA encourages the contract specialist to perform the cost analysis. However, the contract specialist may seek the assistance of a cost/price analyst when necessary;

(ii) An evaluation of the offeror's proposed management structure to be utilized for performance;

(iii) An evaluation of the offeror's subcontracting program as it relates to small businesses, labor surplus area concerns, and socially and economically disadvantaged business enterprises;

(iv) An evaluation of the offeror's record of performance under prior EPA contracts as it relates to timely performance, history of cost control, requests for changes, and quality of the end product. The BEP should obtain this information from the Contractor Performance Evaluation System. Where the offeror is known to have performed contracts with other Government agencies for comparable work, the BEP should contact those agencies for a record of past performance; and

(v) An evaluation of those business elements submitted with each proposal which could lead to a determination of nonresponsibility by the Contracting Officer.

(d) *Safeguarding information.* The following procedures are prescribed for protecting source selection information.

(1) Offerors' identities, offer contents, and prices shall be treated with the utmost discretion to avoid compromising the evaluation results or giving any offeror an unfair competitive advantage. Any questions regarding the receipt and distribution of offers, status of the proceedings, or other matters shall be referred to the Contracting Officer or designated contract specialist.

(2) After receipt of proposals, the contract specialist shall serially number all proposal copies received, distribute the required number of proposal copies to the TEP and BEP, and be responsible for the collection and final disposal of proposal copies. The panel chairpersons shall maintain a log of proposal distribution within the TEP and BEP. The contract specialist shall destroy all excess copies of proposals in a timely manner. The original copy of each unsuccessful proposal should be retained by the contract specialist as a reference in conducting debriefings. A minimum of two copies of the successful proposal should be retained (contract file copy/Project Officer file copy) for reference in administering the contract. Final disposition of the file shall be accomplished in accordance with FAR subpart 4.8.

and the EPA "Records Management Manual."

(e) *Rejection of proposals.* The Head of the Contracting Activity is authorized to make the determination in FAR 15.608(b).

[49 FR 8843, Mar. 8, 1984, as amended at 50 FR 14359, Apr. 11, 1985]

1515.609 Competitive range.

(a) The Contracting Officer shall prepare the determination of the competitive range for the subsequent concurrence of the SSO. Where there is reasonable doubt regarding the inclusion of a particular offer within the competitive range, that doubt should be resolved in favor of inclusion. All determinations must be completely documented to support the competitive range decision.

(b) When the procurement action is expected to exceed $5,000,000 ($25,000,000 for Superfund), the SSO may call for an oral briefing by the Contracting Officer prior to concurrence on the competitive range decision.

(c) When only one offer is determined to be in the competitive range, the Contracting Officer shall review the solicitation document to assure that it did not unduly restrict competition. The competitive range determination shall include the Contracting Officer's determination that the solicitation is not restrictive. The determination shall include a discussion of the relevant aspects of the solicitation.

[49 FR 8843, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

1515.610-70 Limited discussions vs full negotiations.

(a) To satisfy the varying nature of its acquisitions, EPA encourages the Contracting Officer to suit the negotiation strategy to the circumstances of the procurement. Factors which influence this decision include the number of proposals and relative closeness of technical scores and costs.

(b) After determination of the competitive range, the Contracting Officer may proceed with limited cost/full technical discussions with the firms in the competitive range, generally through interrogatories, and final in-depth negotiations with one or more firm(s) still within the competitive range after evaluation of revised proposals; complete/full cost and technical negotiations with all firms comprising the competitive range; or a variation of these two approaches as the circumstances of the procurement dictate. Regardless of which approach is used, the Contracting Officer is encouraged to raise cost questions as early as possible and not defer them to final negotiations. Discussions/negotiations with contractors in the competitive range shall include questions on past performance (Government and non-Government) that was less than satisfactory. Information on past performance may be obtained from program personnel who have served as Project Officers on relevant contracts, and/or from the contractor performance evaluations maintained by the Procurement and Contracts Management Division.

1515.611 Best and final offers.

The Contracting Officer shall establish a common cut-off date for receipt of revised proposals and/or confirmations of negotiations (best and final offers) upon completion of limited discussions or full negotiations.

1515.612 Formal source selection.

(a) *Responsibilities for evaluation and selection.* The Source Selection Official (SSO) shall appoint the SEB, TEP, and BEP members prior to issuance of the solicitation to allow the members to participate in the development and review of the solicitation document. Appointments should be recommended in the source selection plan prepared by the Contracting Officer in accordance with FAR 15.612(c). Individuals involved in the evaluation and selection process shall be at the levels specified below.

(1) *Acquisitions having a potential value exceeding $5,000,000 ($25,000,000 for Superfund):*

(i) SSO—RAD

(ii) SEB Chairperson—Chief of the Contracting Office (CCO) or, in his/her absence, the Acting CCO.

(iii) SEB membership—TEP chairperson, BEP chairperson, program office representative not otherwise involved in the evaluation process, and other specialists appointed by the SSO.

(iv) TEP Chairperson—Project Officer (PO).

(v) TEP Membership—At least two members in addition to the Project Officer who are knowledgeable of the procurement's technical aspects.

(vi) BEP Chairperson—Contracting Officer (CO).

(vii) BEP Membership—Contract specialist and cost/price analyst.

(2) *Acquisition having a potential value of $5,000,000 or less ($25,000,000,000 or less for Superfund)*:

(i) SSO—To be determined by the Chief of the Contracting Office, unless otherwise restricted in his/her delegation of procurement authority.

(ii) SEB—An SEB need be established only when requested by the program office or determined necessary by the SSO. The SSO shall determine the organizational levels of the individuals to serve on the SEB.

(iii) TEP and BEP chairpersons and memberships shall be constituted as in paragraphs (a)(1)(iv) through (vii) of this section. (For contracts valued at $500,000 or less, the Project Officer may be the only member of the TEP and the Contracting Officer or contract specialist may be the only member of the BEP.)

(b) *Source selection decision*—(1) *Source Evaluation Board Report*. In procurements where an SEB is convened, the SEB shall provide the SSO with a report on its findings. The report shall be submitted after completion of discussions or full negotiations, depending on the source selection method employed, and shall include:

(i) A description of the acquisition;

(ii) A summary of the significant strengths, weaknesses, and risks associated with each offer still in the competitive range. This summary shall generally be an independent assessment of the facts and findings appearing in the TEP and BEP reports. The SEB report contains recommendations for selection; and

(iii) A statement that the SEB members are free from actual or potential personal conflicts of interest.

(2) *Source selection*. (i) The Contracting Officer shall prepare the source selection decision for the SSO's subsequent approval. The decision shall document the consideration given to price or cost, technical merit, and other factors contained in the solicitation. These other factors (e.g., record of prior performance, the offeror's subcontracting plan, etc.) may be used as the unscored discriminating elements for determining the selection of a source between two otherwise substantially equal offers from both a cost and technical standpoint.

(ii) The SEB report to the SSO may serve as the source selection decision provided the recommendation of the SEB is accepted by the SSO and the SEB report includes the information required by 1515.612(b)(2)(i).

[49 FR 8843, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

Subpart 1515.8—Price Negotiation

1515.804 Cost or pricing data.

1515.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

The Responsible Associate Director (RAD) is delegated the authority to waive, in exceptional cases, the requirement for submission of certified cost or pricing data.

[49 FR 8843, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

Subpart 1515.9—Profit

1515.900 Scope of subpart.

This subpart implements FAR subpart 15.9 and prescribes the EPA structured approach for determining profit or fee prenegotiation objectives.

1515.902 Policy.

(a) *EPA structured approach*. FAR 15.902 requires that agencies use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis. The structured approach prescribed in 1515.970 shall be used by EPA Contracting Officers in developing a prenegotiation profit or fee objective except as provided in paragraph (b)(1) of this section. The purpose of the structured approach is:

(1) To provide a standard method of evaluation;

(2) To ensure consideration of all relative factors;

(3) To provide a basis for documentation and explanation of the profit negotiation objective;

(4) To allow Contractors to earn profits commensurate with the assumption of risk;

(5) To reward Contractors who provide their own facilities, financing and personnel; and

(6) To reward Contractors who undertake more difficult work requiring higher risks.

(b)(1) *Other methods.* Contracting Officers may use methods other than those prescibed in 1515.970 for estabishing profit or fee objectives under the following circumstances.

(i) Architect-engineering contracts;

(ii) Personal or professional service contracts;

(iii) Management contracts, e.g., for maintenance or operation of Government facilities;

(iv) Termination settlements;

(v) Engineering services, labor-hour, time and materials contracts which provide for payment on a man-hour, man-day, or man-month basis, and where the contribution by the Contractor constitutes the furnishing of personnel rather than the output of an integrated research, engineering, or manufacturing operation;

(vi) Construction contracts; and

(vii) Cost-plus-award-fee contracts.

(2) Generally, it is expected that such methods will:

(i) Provide the Contracting Officer with a technique that will ensure consideration of the relative value of the appropriate profit factors described under "Profit Factors," and

(ii) Serve as a basis for documentation of the objective.

(c) Under unusual circumstances, the RAD may specifically waive the requirement for the use of the guidelines. Such exceptions shall be justified in writing and authorized only in situations where the guidelines method is determined to be unsuitable.

(d) *Limitations.* In the event that any of the methods used would result in establishing a fee objective in violation of limitations established by statute (see FAR 15.903(d), the maximum fee objective shall be the percentage allowed pursuant to such limitations. No administrative ceilings on profits or fees shall be established.

[49 FR 8843, Mar. 8, 1984; 49 FR 24734, June 15, 1984, as amended at 55 FR 24579, June 18, 1990]

1515.905 Profit-anaylsis factors.

Profit-analysis factors prescribed in the EPA structured approach in analyzing profit or fee include those prescribed by FAR 15.905-1 and additional factors authorized by FAR 15.905-2 to foster achievement of program objectives. These profit or fee factors are prescribed in 1515.970-2.

1515.970 EPA structured approach for developing profit or fee objectives.

1515.970-1 General.

(a) It is the policy of the Agency to utilize profit to attract Contractors who possess talents and skills necessary to the accomplishment of the objectives of the EPA and to stimulate efficient contract performance. In negotiating profit/fee, it is necessary that all relative factors be considered, and that fair and reasonable amounts be negotiated which give the Contractor a profit objective commensurate with the nature of the work to be done, the Contractor's input to the total performance, and the risks assumed by the Contractor.

(b) To properly reflect differences among contracts and the circumstances relating thereto and to select an appropriate relative profit/fee in consideration of these differences and circumstances, weightings have been developed for application by the Contracting Officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.905 and paragraph 1515.970-2(a)(1). Each profit factor or subfactor, or component thereof, has been assigned weights relative to their value to the contract's overall effort and the range of weights to be applied to each profit factor.

1515.970-2 EPA structured system.

(a)(1) *Profit factors.* The factors set forth below and the weighted ranges listed after each factor shall be used in all instances where the profit is to be specifically negotiated.

CONTRACTOR'S INPUT TO TOTAL PERFORMANCE

Direct materials	Weight range (percent)
Purchases	1 to 4
Subcontracts	1 to 5
Equipment	1 to 2
Engineering labor	8 to 15
Engineering overhead	6 to 9
Manufacturing labor	5 to 9
Manufacturing overhead	4 to 7
Consultants	2 to 5
Other direct costs	1 to 3
General and administrative expenses	5 to 8
Contractor's assumptions of contract cost risk	0 to 6
Record of contractor's performance	−2 to +2.
Cost efficiency	
Management	
Extent of investment	
Reliability of cost estimates	
Inventive and developmental contributions	
Timely performance	
Small business participation	
Labor surplus area participation	
Extent of Government assistance	
Effect of competition	

(2) The Contracting Officer shall first measure the "Contractor's Input to Total Performance" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost recognized by the Contracting Officer. Such costs are multiplied by the specific percentages to arrive at specific dollar profits. The amount calculated for facilities capital cost of money shall not be included as part of the cost base for the computation of profit or fee. A complete discussion of how facilities capital cost of money is determined and how it is applied and administered is set forth in FAR 31.205-10.

(3) After computing a total dollar profit for the Contractor's Input to Total Performance, the Contracting Officer shall calculate the specific profit dollars assigned for cost risk and performance. This is accomplished by multiplying the total Government cost objective, exclusive of any facilities capital cost of money, by the specific weight assigned to cost risk and performance. The Contracting Officer shall then determine the profit or fee objective by adding the total profit dollars for the Contractor's Input to Total Performance to the specific dollar profits assigned to cost risk and performance. The profit or fee objective shall then be reduced by an amount equal to the amount of facilities capital cost of money allowed. EPA Form 1900-2 shall be used to facilitate the calculation of this profit or fee objective.

(4) The weight factors shown are designed for arriving at profit or fee objectives for other than nonprofit and not-for-profit organizations. Adjustments as explained below are to be made to reflect differences between profit and nonprofit organizations.

(i) For purposes of this subparagraph, nonprofit and not-for-profit organizations are defined as those business entities organized and operated exclusively for charitable, scientific or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 51 of the Internal Revenue Code.

(ii) For contracts with nonprofit and not-for-profit organizations where fees are involved, the following adjustments are required:

(A) A special factor of −3 percent shall be assigned in all cases.

(B) The weighted ranges from "Record of Contractor's Performance" shall be halved, i.e., −1 percent to +1 percent rather than −2 percent to +2 percent.

(b) *Assignment of values to specific factors*—(1) *General.* In making his/her judgment of the value of each factor, the Contracting Officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as set forth herein.

(2) *Contractor's input to total performance.* This factor is a measure of how much the Contractor itself is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the Contractor's responsibility for contract performance, takes into account what resources are necessary and what the Contractor itself must do to accomplish a conversion of ideas and materials into the final item called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the Contractor's contribution to total performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(i) *Direct materials (purchased parts, subcontracted items, and other material).* Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The Contracting Officer shall also determine whether the Contractor will, for example, obtain the materials by routine orders or readily available supplies (particularly those of substantial value in relation to the total contract costs), or by detailed subcontracts for which the prime Contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements. Consideration should be given to the managerial and technical efforts necessary for the prime Contractor to administer subcontracts, and select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition. These determinations should be made for purchases of raw materials or basic commodities, purchases of processed material including all types of components of standard or near-standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end-item. In the application of this criterion, it should be recognized that the contribution of the prime Contractor to its purchasing program might be substantial. This might be applicable in the management of subcontracting programs involving many sources, involving new complex components and instrumentation, incomplete specifications, and close surveillance by the prime Contractor's representative. Recognized costs proposed as direct material cost such as scrap charges shall be treated as material for profit evaluation. If intracompany transfers are accepted at price, in accordance with FAR 31.205-26(e), they should be excluded from the fee computation. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead. Normally, the lowest weight for direct material is 2 percent. A weighting of less than 2 percent and would be appropriate only in unusual circumstances when there is a minimal contribution by the Contractor in relation to the total cost of the material.

(ii) *Equipment.* It is the policy of the Agency to contract with individuals or firms who have special capabilities relative to the needs of the EPA. These capabilities include personnel with particular skills, or talents, and facilities (plant and equipment) necessary to complete the contract objectives. For the purpose of profit/fee analysis, equipment includes purchased items which are not to be an integral part of the final product. It would generally consist of production or test equipment. Where the EPA has to provide equipment to be Contractor either as Government-furnished equipment or Contractor-acquired equipment, appropriate profit/fee adjustments are necessary. Generally, a low weight range shall be assigned to the cost of such equipment (1 to 2 percent).

(iii) *Engineering labor and manufactuirng labor.* Analysis of the engineering labor and manufacturing labor items of the cost content of the contract should include evaluation of the comparative quality and level of the engineering talents, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance and the corresponding need for engineering supervision and coordination should be evaluated. Similarly, the variety of manufacturing labor skills required and the Contractor's manpower resources for meeting these requirements should be considered. For the purpose of profit/fee computation, manufacturing labor includes all nonprofessional labor, e.g., secretaries, technicians and carpenters, etc.

(iv) *Engineering overhead, manufacturing overhead, and general and administrative expenses.* (A) Where practicable, analysis of these overhead items of costs should include the evaluation of the make up of the expenses and how much they contribute to contract performance. This analysis should include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses such as utilities, depreciation, and maintenance, and hence given lesser profit consideration given the pools as a whole.

(B) It is not necessary that the Contractor's accounting system break down its overhead expenses within the classification of engineering overhead, manufacturing overhead, and general and administrative expenses. The Contractor whose accounting system only reflects one overhead rate on all direct labor need not change its system to correspond with all the above classifications. Where practicable, the Contracting Officer in his/her evaluation of such a Contractor's overhead rate should break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, and general and administrative expenses and follow the appropriate evaluation technique. When it is not practicable to evaluate the elements of the burden pool, the following rates should usually apply:

	Percent
Engineering overhead	7.5
Manufacturing overhead	5.5
Composite overhead	6.5
G&A	6.5

(C) It is not necessary for the Contracting Officer to make a separate profit evaluation of overhead expenses in connection with each procurement action for substantially the same product with the same contractor. Once an analysis of the profit weight to be assigned the overhead pool has been made, the weight assigned may be used for future procurements with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances.

(v) *Consultants.* Consultant costs, whether related to an individual consultant or consulting firm should be analyzed from the standpoint of what talents and skills the consultants have and how they will be used on the contract. The analysis should consider if the Contractor normally should be expected to have people with comparable expertise employed as full-time staff or if the contract requires skills not normally available on an employer-employee relationship. Where the Contractor is using consultants to perform services which could normally be expected to be done in-house, the rating factor should be generally below 2 to 3 percent. Where noted experts are retained for consultation on the contract, the rating will generally be higher.

(vi) *Other direct costs.* Items of costs, such as travel, subsistence, printing, and computers should generally be assigned a rating of 1 to 3 percent. The analysis of these costs should be similar to the analysis of direct materials.

(3) *Contractor's assumption of contract cost risk.* (i) It is the policy of the Administration to shift the risk of contract costs to the fullest extent practicable to contractors and to compensate them for the assumption of this risk. Evaluation of this risk requires a determination of:

(A) The degree of cost responsibility the Contractor assumes, (B) the reliability of the cost estimates in relation to the task assumed, and (C) the chance of the Contractor's success or failure. This factor is specially limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields are not within the scope of this factor.

(ii) The first and basic determination of the degree of cost responsibility assumed by the Contractor is related to the sharing of total risk of contract cost by the Government and the Contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring only that the Contractor use its best efforts to perform a task, and a firm-fixed-price contract for a complex item. Such cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility, whereas such firm-fixed-price contract would reflect a complete assumption of cost responsibility. Therefore, in the first step of determining what value is to be given for the Contractor's assumption of contract cost risk, a zero rating shall be given to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating shall be given to a closely priced firm-fixed-price contract for a new, complex item.

(iii) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the Contractor's assumption of contract cost risk.

(iv) The third determination is that of the difficulty of the Contractor's task. The Contractor's task can be difficult or easy, regardless of the type of contract.

(v) Contractors are likely to assume greater cost risks only if the Contracting Officers objectively analyze the risk incident to proposed contracts and are willing to compensate Contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract justify a reward of less than 4 percent. Where proper contract type selection has been made, the reward for risk by contract type would usually fall into the following percentages ranges:

Type of contract	Percentage ranges
Cost-plus-fixed-fee	0 to 1.
Cost-plus-incentive-fee including cost incentives only.	1 to 2.
Cost-plus-incentive-fee including cost, performance, and delivery incentives.	2½ to 3.
Fixed-price-incentive including cost incentives only.	2 to 4.
Fixed-price-incentive including cost, performance, and delivery incentives.	3 to 5.
Prospective price determination	4 to 5.
Firm-fixed-price	4 to 6.

(A) These ranges may not be appropriate for all procurement situations. For instance, a fixed-price-incentive contract which is closely priced with a low ceiling price and a high incentive share may be tantamount to a firm-fixed-price contract. In this situation, the Contracting Officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The Contractor's willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contracts.

(B) In making a contract cost risk evaluation in a procurement action that involves definitization of a letter contract, consideration should be given to the effect on total contract cost risk as a result of having partial performance under a letter contract. Under some circumstances, it may be reasoned that the total amount of cost risk has been effectively reduced by the existence of a letter contract. Under other circumstances, it may be apparent that the Contractor's cost risk remained substantially as great as though a letter contract had not been used. Where a Contractor has begun work under an anticipatory cost letter, the risk assumed is greater than the normal situation. To be equitable the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances, not just to the portion of costs incurred or percentages of work completed, prior to definitization.

(4) *Record of contract performance.* (i) The purpose of this factor is to motivate Contractors to improve their performance by rewarding them for excellent past performance and penalizing them for poor performance. Effective use of this factor requires that: (A) Reports on the various aspects of past performance be obtained and evaluated; and (B) this information be used in such a way as to motivate Contractors to improve their performance.

(ii) The evaluation of a particular Contractor's past performance and the importance placed upon the various subfactors listed below should be done in such a way as to motivate the Contractor to improve its performance. For instance, it might be pointless, in evaluating the performance of an autonomous division of a multidivisional contractor, to place emphasis on the performance of another autonomous division. Under such circumstances, the management of the division being evaluated might have no means of controlling the performance of the other division; therefore, emphasis on this performance by assigning a plus or minus rating to this factor might have a negative effect upon motivation to improve.

(iii) The weight to be assigned to this factor is arrived at on a judgment basis rather than an arithmetical averaging of weights assigned to all factors, depending upon the particular procurement situation, and the relative importance of the various factors. For example, an evaluation of a particular Contractor may indicate that its performance was satisfactory in most areas, except that it showed a preference for doing all work in-house and a disinclination to support Government small business objectives. In such a case the Contracting Officer may feel that the importance of these factors might justify the assignment of a lower overall rating for the record of past performance.

(iv) As stated above, the purpose of this factor is to reward a Contractor for excellent past performance and penalize it for poor performance. Therefore, performance which is rated as merely satisfactory should generally be assigned a weight of zero. However, a Contractor who has consistently met contractual requirements may be awarded a plus.

(v) The following factors are to be considered in evaluating a Contractor's performance record:

(A) *Cost efficiency.* Low cost performance reflecting economic use of facilities and manpower, sound purchasing methods and subcontracting procedures, and effective inventory control are criteria for consideration. Improvement in efficiency through investment in plant modernization, past efficiencies, or lack thereof, effectiveness of the Contractor's make-or-buy program, purchasing and subcontracting system and inventory control should be evaluated.

(B) *Management.* Stability and competence of managment personnel, their willingness and ability to adjust company resources to meet peculiarly difficult and changing control requirements are criteria for consideration. The degree of cooperation by the Contractor with the objectives of the Government should be considered.

(C) *Extent of the contractor's investment.* The extent of a Contractor's total investment (i.e., both equity and borrowed capital) in the performance of the contract will be taken into consideration in determining the amount of the fee or profits.

(D) *Reliability of cost estimates.* Accuracy and reliability of previous cost estimates should be considered. Where substantial overruns have occurred, the Contracting Officer should attempt to determine the reasons.

(E) *Inventive and developmental contributions.* Extent and nature of Contractor-initiated and financed research, development, design work, product engineering, quality control, and manufacturing processes and techniques in the areas of concern to the EPA should be analyzed.

(F) *Timely performance.* The Contractor's performance record, considering excusable delays and the Contractor's efforts to overcome delays, should be analyzed.

(G) *Small business participation.* The Contractor's policies and procedures which energetically support Government small business programs pursuant to FAR subpart 19.7 should be given favorable consideration. Any unusual effort which the Contractor displays in subscontracting with small concerns, particularly for development type work likely to result in later production opportunities, and overall effectiveness of the Contractor in subcontracting with and furnishing assistance to small concerns should be considered. Conversely, failure or unwillingness on the part of the Contractor to support Government small business policies should be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(H) *Labor surplus area participation.* A similar review and evaluation (as required in paragraph (b)(4)(v)(G) of this section) should be given to the Contractor's policies and procedures supporting the Government's labor surplus area program pursuant to FAR part 20. Particular favorable consideration should be given to a Contractor who: (1) Makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (2) promotes maximum subcontractor utilization of certified-eligible concerns, as defined in FAR 20.101.

(I) *Extent of Government assistance.* The Government encourages its Contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. Where extraordinary financial, facilities, or other assistance must be furnished to a Contractor by the Government, such extraordinary assistance should have a modifying effect in determining what constitutes a fair and reasonable profit or fee.

(J) *Effect of competition.* When competition is effective and proposals are on a firm-fixed-price basis, the Contracting Officer normally need not consider in detail the amount of estimated profit included in a price. When effective competition is lacking, and in all cases where cost analysis is performed in accordance with FAR subpart 15.8, the estimate for profit, target profit or fee, or the proposed fixed fee should be analyzed in the same manner as all other elements of price.

[49 FR 8843, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1515.970-3 Documentation.

Determination of the profit or fee objective, in accordance with this subpart shall be fully documented. Since the profit objective is the Contracting Officer's pre-negotiation evaluation of a total profit allowance for the proposed contract, the amounts developed for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective and from the prenegotiation detailed application of the weights to each element of the Contractor's input to total performance. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the prenegotiation profit objective, as a result of changes to the Contractor's input to total performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained in the record of negotiation prepared in accordance with FAR 15.808.

Subpart 1515.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1515.1003 Debriefing of unsuccessful offerors.

The CCO, or his/her designee, shall conduct debriefings of unsuccessful offerors, with participation of the Project Officer and such other specialists as the CCO or designee deems necessary. All debriefings shall be held after contract award.

[49 FR 8843, Mar. 8, 1984. Redesignated at 50 FR 14359, Apr. 11, 1985, and amended at 55 FR 24579, June 18, 1990]

PART 1516—TYPES OF CONTRACTS

Sec.

1516.000 Scope of part.

Subpart 1516.3—Cost-Reimbursement Contracts

1516.307 Contract clauses.

Subpart 1516.4—Incentive Contracts

1516.404-2 Cost-plus-award-fee contracts.
1516.404-270 Scope.
1516.404-271 Applicability.
1516.404-272 Objectives.
1516.404-273 Limitations.
1516.404-274 Fee limitations.
1516.404-275 Definitions and responsibilities.
1516.404-276 Appointment of personnel.
1516.404-277 Preparation of the award fee plan.
1516.404-278 Operation of the evaluation system.
1516.404-279 Simplified procedures.
1516.404-2710 Deviation.
1516.405 Contract clauses.

Subpart 1516.5—Indefinite-Delivery Contracts

1516.505 Contract clauses.

Subpart 1516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1516.603 Letter Contracts.
1516.603-3 Limitations.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8852, Mar. 8, 1984, unless otherwise noted.

1516.000 Scope of part.

This part implements and supplements FAR part 16. It provides policy and procedures for cost-plus-award-fee type contracts and prescribes additional contract clauses for use with cost-reimbursement and indefinite-delivery type contracts.

Subpart 1516.3—Cost-Reimbursement Contracts

1516.307 Contract clauses.

The Contracting Officer shall insert the clause in 1552.216-71, Date of Incurrence of Cost, in cost-reimbursement contracts when an anticipatory cost letter has been issued on the project.

Subpart 1516.4—Incentive Contracts

1516.404-2 Cost-plus-award-fee contracts.

1516.404-270 Scope.

This subsection establishes the EPA policy and procedures for cost-plus-award-fee (CPAF) type contracts.

1516.404-271 Applicability.

(a) The provisions of this subsection apply to all CPAF type contracts. Contracting Officers shall consider all contract actions conforming to the limitations of FAR 16.404-2(c) and 1516.404-273, which have a potential value of $5,000,000 or more as candidates for award as a CPAF contract. Contracting Officers may utilize CPAF contracts for requirements whose estimated value is less than $5,000,000 when considered appropriate.

(b) The formal procedures established in this subpart apply to contract acquisitions with a potential value exceeding $2,000,000. The simplified procedures prescribed in 1516.404-279 are authorized for CPAF contracts with a potential value of $2,000,000 or less.

1516.404-272 Objectives.

The award fee contract, when determined suitable for use, is a combination of at least three EPA contracting objectives: (a) It provides for the reimbursement of allowable, allocable, and reasonable costs; (b) it fixes a dollar amount beyond the initial estimate of costs that represents the compensation for risk (base fee); and (c) it motivates performance throughout the life of a contract where success breeds additional income (award fee). The CPAF contract is used when the work to be performed is such that specific quantitative objective measurement is not feasible and the required performance extends over a sufficient period of time for the award fee features to be used effectively.

1516.404-273 Limitations.

Contracting Officers should use the CPAF contract in acquiring supplies or nonpersonal services only where the contract amount, period of performance, and expected benefits warrant the additional effort and costs involved in administering this type of contract. Contracting Officers should use the CPAF contract only for those acquisitions where:

(a) The Contracting Officer determines a cost-reimbursement contract is necessary in accordance with FAR 16.301-2 and FAR 16.301-3;

(b) The period of performance is more than one year;

(c) The nature of the work cannot be specifically described and is of a continuous service or level of effort susceptible to monitoring; or

(d) The requirement is of such a nature that the Contractor's performance is susceptible to monitoring.

1516.404-274 Fee limitations.

The base fee should normally be not more than three percent of the estimated cost of the contract. (See FAR 15.903(d), for maximum fee limitations.) At the time of award, the Contracting Officer shall obligate the total amount of base and award fee. However, in incrementally funded contracts, the Contracting Officer shall separate the fee into the base and award fee portions and obligate only the initial increment of cost, base fee, and award fee. The Contracting Officer shall award the total award fee earned for the period being evaluated. The Contracting Officer shall not carry forward into a subsequent evaluation period any award fee not awarded in a previous evaluation period.

1516.404-275 Definitions and responsibilities.

Award Fee Plan means a plan, developed by the PEB, which identifies various categories of performance and clearly describes the criteria used by the PEB to evaluate Contractor performance. The plan also allocates the award fee pool among performance categories.

Award Fee Pool means that portion of the contract fee set forth in the contract as the amount of fee available to be awarded for Contractor performance in accordance with the criteria contained in the Award Fee Plan.

Evaluation Coordinator means a Government official appointed to receive, code, validate, and assess Performance Monitor reports; and to present such Contractor performance information and data to the PEB.

Fee Determination Official (FDO) means the Chief of the Contracting Office who reviews the recommendation of the Performance Evaluation Board and makes the final determination of the award fee.

PEB Executive Secretary means a Government official who prepares the official PEB report.

Performance Evaluation Board (PEB) means a board of Government officials, which performs the in-depth review of all aspects of Contractor performance and recommends an appropriate fee to the FDO.

Performance Event means a discrete happening or series of related happenings occurring during the course of performance which indicate or represent Contractor performance. Performance events shall be reported by the performance monitors on EPA Form No. 1900-41B. The Contractor may report performance events directly to the PEB through the Evaluation Coordinator either as they occur or as a summary report of the evaluation period.

Performance Monitor(s) means those Government employees designated to observe, assess, and report the performance of the Contractor on a close, continuous day-to-day basis. Performance monitors are of two categories: Technical and business. The technical performance monitors report on the

Contractors performing the technical requirements of the contract. The business performance monitors report on the business aspects of the Contractor's performance; these individuals will be the Contracting Officer/Contract Specialist and Cost Analyst most familiar with the specific contractual and financial aspects of the contract.

Period of Evaluation means a segment of the contract's period of performance specified in the award fee plan which will be evaluated by the PEB for purposes of establishing the award fee for that period.

1516.404-276 Appointment of personnel.

(a) The Responsible Associate Director (RAD) will determine, in concert with the responsible program office, the participants in the award fee process. The Contracting Officer shall prepare the formal appointment memorandum and forward it to the HCA prior to issuance of the solicitation. Individuals shall be designated as follows:

(1) "Chairperson, Performance Evaluation Board and Board Members." The Chairperson of the Performance Evaluation Board shall be the laboratory or division director of the program initiating the procurement. A representative of the responsible contracts operation office shall be a voting member of all PEBs. The Chairperson of the PEB and the Contracting Officer shall recommend other board members.

(2) "Evaluation Coordinator." As recommended by the Chairperson of the PEB.

(3) "Executive Secretary." As recommended by the Chairperson of the PEB.

(4) "Performance Monitors." The PEB Chairperson shall assure that adequate performance monitoring capability is available. These individuals need not be designated in the appointment memorandum.

(b) If any changes in the composition of the PEB are necessary, the following approvals shall be obtained:

(1) Chairperson, PEB—by the FDO.

(2) PEB members—by the Chairperson, PEB.

[49 FR 8852, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

1516.404-277 Preparation of the award fee plan.

The purpose of the award fee plan is to describe in one document the plan for monitoring, assessing, and evaluating Contractor performance to determine any award fee earned. The PEB shall develop and follow an award fee plan which clearly describes the criteria to be used to determine fee. The PEB shall forward the plan through the Contracting Officer to the RAD for approval prior to issuance of the solicitation. The Contracting Officer shall include the award fee plan in the solicitation. A complete award fee plan should include the following elements:

(a) The base fee amount.

(b) The total award fee pool.

(c) Performance areas to be evaluated.

(d) Criteria to be used in evaluations.

(e) Relative weights to be assigned to performance areas and to the evaluation criteria.

(f) Frequency and timing of award fee determination.

(g) Proportion of the total award fee pool to be available for each evaluation period.

(h) Procedure to be followed (the timing involved) in evaluating performance and determining the award fee.

[49 FR 8852, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

1516.404-278 Operation of the evaluation system.

(a) *Performance Reporting.* Performance Monitors shall report information in the form of one or more individual Performance Event Reports on EPA Form 1900-41B, CPAF Contract Individual Performance Event, directly to the cognizant Evaluation Coordinator in accordance with intervals specified in the award fee plan. The Performance Monitors shall observe the following definitions of Contractor performance in reporting and judging performance events:

(1) Superior—"+" The performance event exceeds the satisfactory level.

(2) Satisfactory—"0" The performance event is acceptable.

(3) Substandard—"–" The performance event is less than satisfactory.

(b) *Performance Information Coordination.* (1) The Evaluation Coordinator shall receive, code, validate, and assess the Performance Events (PE) reports submitted by the monitors and select all those PEs he/she considers to be significant, i.e., above (+) or below (–) satisfactory performance.

(2) The Evaluation Coordinator shall also prepare separate PE summaries for each performance evaluation category. The summaries will be prepared on EPA Form 1900-41A, Summary of Significant Performance Events, and will incorporate all monitor and contractor reported PEs the coordinator considers significant. The Evaluation Coordinator shall be responsible for preparing and presenting all material the PEB requires for its performance assessment. This material will serve: (i) As the PEB's agenda, and (ii) as the complete documentation package which will support the PEB's fee recommendation. It will be organized into separate sections for each performance evaluation category. Each section will consist of the following material:

(A) Summary of Significant Performance Events, EPA Form 1900-41A.

(B) The Individual PE reports, EPA Form 1900-41B.

(c) *Evaluation of Performance.* The PEB shall perform a review of the performance events against each performance evaluation category to arrive at the recommended award fee for each category as well as the total award fee for the period. The PEB must meet within 30 calendar days after the end of each evaluation period. At the initial PEB meeting the board members shall determine what fee the Contractor would normally receive if the work was being undertaken on a Cost-Plus-Fixed-Fee (CPFF) basis. After determining this amount, the Board shall determine what percentage of the available award fee pool that, when added to the base fee, will equal the amount the Contractor would receive under a CPFF contract. This percentage of award fee will set the baseline for satisfactory performance.

(d) *The Period of Evaluation.* The period of evaluation will be at least every six months. The desired period of evaluation will be every four months.

(e) *Performance Evaluation Report.* Following the PEB meeting at which the award fee recommendation is reached, the Executive Secretary will prepare a Performance Evaluation Report and forward this to the Contracting Officer. The Contracting Officer will prepare a letter for signature of the FDO informing the Contractor's general management of the amount and basis of the fee awarded. The Contracting Officer shall forward the Performance Evaluation Report and the fee determination letter (the Performance Evaluation Report shall be an attachment to the fee determination letter) to the FDO for signature. The FDO will review the performance evaluation and fee recommendation and make a final determination of fee.

1516.404-279 Simplified procedures.

The following CPAF procedures are authorized for procurements of $2,000,000 or less which conform to the limitations in paragraph 1516.404-273.

(a) No appointment of a formal PEB is necessary. The Project Officer and Contracting Officer perform the duties and functions of the PEB members. In lieu of performance monitors reporting to an evaluation coordinator, the Project Officer will personally monitor and assess the technical performance of the Contractor for each evaluation period. The Contracting Officer or contract specialist will monitor the business aspects of the Contractor's performance.

(b) The Chief of the Contracting Office shall approve the award fee plan in lieu of the HCA.

(c) The Project Officer and the Contracting Officer shall report performance events on EPA Form 1900-41B. Use of the summary of significant performance events is not required.

(d) The Project Officer, with input from the Contracting Officer, will prepare the performance evaluation report.

1516.404-2710 Deviation.

Deviation from this section shall be as prescribed in subpart 1501.4.

1516.405 Contract clauses.

The Contracting Officer shall insert the clause at 1552.216-70, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

Subpart 1516.5—Indefinite-Delivery Contracts

1516.505 Contract clauses.

(a) The Contracting Officer shall insert the clause in 1552.216-72, Ordering—By Designated Ordering Officers, in indefinite delivery/indefinite quantity type solicitations and contracts.

(b) The Contracting Officer shall insert the clause in 1552.216-73, Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract, in solicitations and contracts to specify fixed rates for services.

Subpart 1516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

SOURCE: 55 FR 24580, June 18, 1990, unless otherwise noted.

1516.603 Letter Contracts.

1516.603-3 Limitations.

The RAD is authorized to make the determination in FAR 16.603-3.

PART 1517—SPECIAL CONTRACTING METHODS

Subpart 1517.2—Options

Sec.
1517.200 Scope of subpart.
1517.202 Use of options.
1517.207 Exercise of options.
1517.208 Solicitation provisions and contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8854, Mar. 8, 1984, unless otherwise noted.

Subpart 1517.2—Options

1517.200 Scope of subpart.

This subpart does not apply to contracts for services involving: (a) Construction, alteration, or repair of real property; (b) architect-engineering services; (c) automatic data processing equipment systems; and (d) telecommunication equipment and services. However, it does not preclude the use of options in those contracts.

1517.202 Use of options.

(a) The use of options for increased quantities of supplies or services which exceed 50 percent of the base quantity specified in the contract for a particular period shall be approved by the Responsible Associate Director (RAD) prior to issuing the solicitation. In the case of supplies, the 50 percent limitation applies only to contracts which have a base quantity of more than one.

(b) The use of option periods which, when combined with the base contract period, results in a total contract period of performance exceeding thirty-six (36) months shall be approved by the Chief of the Contracting Office prior to issuing the solicitation. In no event, however, shall the total of the base and option periods exceed sixty (60) months in duration.

[49 FR 8854, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

1517.207 Exercise of options.

(a) Unless otherwise approved by the Chief of the Contracting Office, contracts for services employing option periods shall require that a preliminary written notice of the Government's intention to exercise the option be furnished to the Contractor a minimum of sixty (60) calendar days prior to the date for the exercise of the option. Failure to provide such preliminary notice within the timeframe established in the contract waives the Government's right to unilaterally exercise the option and requires the negotiation of a bilateral contract modification in order to extend the period of performance, where such an extension is authorized.

(b) When the term of the service contract coincides with the fiscal year and delays in receipt of authority to obligate funds for the new fiscal year are anticipated, the Contracting Officer, if the contract so provides (see FAR 17.204(d)), may, within 60 days after the end of the fiscal year, unilaterally exercise an option to extend the term of the contract. The option may be exercised only if funds become available within the 60-day period. In the event that sufficient funding is not available within the 60 day period, the Government waives the right to exercise the option, thereby rendering any additional requirements subject to full and open competition requirements.

(c) The Contracting Officer, if the contract so provides, may, subject to the conditions in FAR 17.204(d), 32.703-2, and 32.705-1(a), exercise an option contingent upon the availability of funds. To exercise such an option, the contract must contain the clause in FAR 52.232-18, Availability of Funds. Under no circumstances shall any action be taken which could be construed as creating a legal liability on the part of the Government until a formal notice of availability of funds in the form of a contract modification has been issued by the Contracting Officer.

[49 FR 8854, Mar. 8, 1984, as amended at 50 FR 14359, Apr. 11, 1985]

1517.208 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the solicitation provision at 1552.217-70, Evaluation of Contract Options, in Requests for Proposals when options are included.

(b) The Contracting Officer shall insert the clause at 1552.217-71, Option To Extend the Term of the Contract—Cost-Type Contract, when applicable.

(c) The Contracting Officer shall insert the clause at 1552.217-72, Option To Extend the Term of the Contract—Cost-Plus-Award-Fee Contract, when applicable.

(d) The Contracting Officer shall insert the clause at 1552.217-73, Option for Increased Quantity—Cost-Type Contract, when applicable.

(e) The Contracting Officer shall insert the clause at 1552.217-74, Option for Increased Quantity—Cost-Plus-Award-Fee Contract, when applicable.

(f) The Contracting Officer shall insert the clause at 1552.217-75, Option To Extend the Effective Period of the Contract—Time and Materials or Labor Hour Contract, when applicable.

(g) The Contracting Officer shall insert the clause at 1552.217-76, Option To Extend the Effective Period of the Contract—Indefinite Delivery/Indefinite Quantity Contract, when applicable.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Sec.
1519.000 Scope of part.

Subpart 1519.2—Policies

1519.201 Policy.
1519.201-1 Director of Small and Disadvantaged Business Utilization.
1519.201-2 Small and disadvantaged business utilization specialists.
1519.202-5 Data collection and reporting requirements.

Subpart 1519.5—Set-Asides for Small Business

1519.501 Review of acquisitions.
1519.503 Class set-aside for construction.

Subpart 1519.6—Certificates of Competency and Determinations of Eligibility

1519.602-1 Procedures.

Subpart 1519.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

1519.705-2 Determining the need for a subcontract plan.
1519.705-4 Reviewing the subcontracting plan.
1519.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8855, Mar. 8, 1984, unless otherwise noted.

1519.000 Scope of part.

This part implements FAR part 19 and provides policy and procedures for the development and conduct of the Agency small business and small, disadvantaged business utilization programs; for review of acquisitions for small business set-asides; and for subcontracting with small and small disadvantaged business concerns.

Subpart 1519.2—Policies

1519.201 Policy.

Each program's Assistant or Associate Administrator shall be responsible for developing its socioeconomic goals on a fiscal year basis. The goals shall be developed in collaboration with the supporting Chiefs of Contracting Offices and the local Small and Disadvantaged Business Utilization Specialist (SDBUS), and the Office of Small and Disadvantaged Business Utilization (OSDBU). The goals will be based on advance procurement plans and past performance. The goals shall be submitted to the Director, OSDBU, at least thirty (30) days prior to the start of the fiscal year.

1519.201-1 Director of Small and Disadvantaged Business Utilization.

The Director, OSDBU, provides guidance and advice, as appropriate, to Agency program and contracts officials on small and small disadvantaged business programs. The Director, OSDBU, is the central point of contact for inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and the Congress, and shall advise the Administrator and staff of such inquiries as required. The Director, OSDBU, shall represent the Agency in the negotiations with the other Government agencies on small and small disadvantaged business matters.

1519.201-2 Small and disadvantaged business utilization specialists.

(a) Small and Disadvantaged Business Utilization Specialists (SDBUS) shall be appointed in writing for each contracting office. The SDBUS will normally be appointed from members of staffs of the appointing authority. The SDBUS is administratively responsible directly to the appointing authority and, on matters relating to small and small disadvantaged business program activities, receives technical guidance from the Director, OSDBU. The appointing authorities are the Chiefs of the Contracting Offices.

(b) A copy of each appointment and termination of all SDBU specialists shall be forwarded to the Director, OSDBU. In addition to performing the duties outlined in paragraph (c) of this section that are normally performed in the activity to which assigned, the SDBUS shall perform such additional functions as may be prescribed from time to time in furtherance of overall small and small disadvantaged business utilization program goals. The SDBUS is not precluded from being assigned the responsibility for the labor surplus area program prescribed by FAR part 20. The SDBUS may be appointed on either a full- or part-time basis; however, when appointed on a part-time basis, the small business duty shall take precedence over collateral responsibilities.

(c) The SDBUS appointed pursuant to (a) above shall perform the following duties as appropriate:

(1) Maintain a program designed to locate capable small business sources for current and future acquisitions;

(2) Coordinate inquiries and requests for advice from small and small disadvantaged business concerns on acquisition matters;

(3) Review all proposed solicitations in excess of the small purchase limitation, assure that small business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendations for small business set-asides, or offers of requirements to the SBA for the 8(a) program, and complete EPA Form 1900-37, "Record of Procurement Request Review," as appropriate:

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in an acquisition. When small business concerns cannot be given an opportunity on a current acquisition, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications and/or drawings for future acquisitions are available.

(5) Review proposed contracts for possible breakout of items or services suitable for acquisition from small business and small disadvantaged business concerns;

(6) Advise small businesses with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(7) Participate in the evaluation of a prime contractor's small business subcontracting programs;

(8) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in acquisition programs (see 1519.202-5);

(9) Make available to SBA copies of solicitations when so requested;

(10) Act as liaison with the appropriate SBA office or representative in connection with set-asides, certificates of competency, size classification, and any other matter concerning the small or small disadvantaged business programs.

[49 FR 8855, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

1519.202-5 Data collection and reporting requirements.

(a) As required, monthly reports of factual information, covering acquisition actions and dollars awarded to small businesses, small disadvantaged businesses, women-owned small businesses, the Small Business Administration under the authority of section 8(a) of the Small Business Act, and information on actions and dollars made under small business set-asides shall be submitted by the Procurement and Contracts Management Division, to the Director, OSDBU.

(b) The Financial Management Division will submit to the Director, OSDBU, a copy of the Small Purchase Activity Report that shows by each EPA purchasing activity the following information (cumulative monthly) for small purchases:

(1) Total actions and dollar value of awards;

(2) Total actions and dollar value of awards to all businesses;

(3) Total actions and dollar value of awards to small businesses;

(4) Total actions and dollar value of construction awards to small businesses made by set-aside;

(5) Total actions and dollar value of small business awards made by set-asides, excluding set-asides for construction;

(6) Total actions and dollar value of awards made to the Small Business

Administration pursuant to section 8(a) of the Small Business Act; and

(7) Total actions and dollar value of awards made to small disadvantaged businesses.

(c) The reports identified in Paragraphs (a) and (b) of this section are to be submitted to the Director, OSDBU, no later than the 20th day following the end of the reporting period with the exception of the last report of the fiscal year which shall be submitted no later than the 30th day following the end of the fiscal year.

Subpart 1519.5—Set-Asides for Small Business

1519.501 Review of acquisitions.

(a) If no Small Business Administration (SBA) representative is available, the Small and Disadvantaged Business Utilization Specialist (SDBUS) shall initiate recommendations to the Contracting Officer for small business set-asides with respect to individual acquisitions or classes of acquisitions or portions thereof.

(b) When the SDBUS has recommended that all, or a portion, of an individual acquisition or class of acquisitions be set aside for small business, the Contracting Officer shall promptly either: (1) Concur in the recommendation or (2) disapprove the recommendation, stating in writing the reasons for disapproval. If the Contracting Officer disapproves the recommendation of the SDBUS, the SDBUS may appeal to the appropriate appointing authority, whose decision shall be final.

1519.503 Class set-aside for construction.

(a) Each proposed acquisition for construction estimated to cost between $10,000 and $1,000,000 shall be set-aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn in accordance with the procedure of FAR 19.506 only if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction acquisitions in excess of $1,000,000 shall be considered on a case-by-case basis.

Subpart 1519.6—Certificates of Competency and Determinations of Eligibility

1519.602-1 Procedures.

A copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.601-1(a), shall be transmitted to the Director, Office of Small and Disadvantaged Business Utilization, concurrently with the submission of a copy of the documentation to the appropriate Small Business Administration Regional Office.

Subpart 1519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1519.705-2 Determining the need for a subcontract plan.

One copy of the determination required by FAR 19.705-2(c) shall be placed in the contract file and one copy provided the Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

1519.705-4 Reviewing the subcontracting plan.

In determining the acceptability of a proposed subcontracting plan, the Contracting Officer shall obtain advice and recommendations from the OSDBU, which shall in turn coordinate review by the Small Business Administration Procurement Center Representative (if any).

1519.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

The synopsis of contract award, where applicable, shall include a statement identifying the contract as one containing Pub. L. 95-507 subcontracting plans and goals.

[49 FR 8855, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

PART 1520—LABOR SURPLUS AREA CONCERNS

Subpart 1520.1—General

Sec.
1520.102 Labor surplus area goals.

Subpart 1520.3—Labor Surplus Area Subcontracting Program

1520.303 Review of subcontracting program.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8856, Mar. 8, 1984, unless otherwise noted.

Subpart 1520.1—General

1520.102 Labor surplus area goals.

Labor surplus area goals shall be developed as prescribed in 1519.201.

Subpart 1520.3—Labor Surplus Area Subcontracting Program

1520.303 Review of subcontracting program.

The Contracting Officer, in conjunction with the Office of Small and Disadvantaged Business Utilization, shall review labor surplus area subcontracting programs.

PART 1522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.
1522.000 Scope of part.

Subpart 1522.1—Basic Labor Policies

1522.103 Overtime.
1522.103-4 Approvals.

Subpart 1522.6—Walsh-Healey Public Contracts Act

1522.608 Procedures.
1522.608-3 Protests against eligibility.
1522.608-4 Award pending final determination.
1522.608-6 Postaward.

Subpart 1522.8—Equal Employment Opportunity

1522.803 Responsibilities.
1522.804 Affirmative action programs.

Sec.
1522.804-2 Construction.

Subpart 1522.10—Service Contract Act of 1965

1522.1003 Applicability.

Subpart 1522.13—Special Disabled and Vietnam Era Veterans

1522.1306 Complaint procedures.

Subpart 1522.14—Employment of the Handicapped

1522.1403 Waivers.
1522.1406 Complaint Procedures.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8857, June 15, 1984, unless otherwise noted.

1522.000 Scope of part.

This part implements FAR part 22 and provide procedures to be followed in obtaining approvals or deteminations from the Small Business Administration (SBA), the Department of Labor (DOL) or the Office of Contract Compliance Programs (OFCCP) on matters related to the application of labor laws.

Subpart 1522.1—Basic Labor Policies

1522.103 Overtime.

1522.103-4 Approvals.

The Chief of the Contracting Office is the Agency approving official.

Subpart 1522.6—Walsh-Healey Public Contracts Act

1522.608 Procedures.

1522.608-3 Protests against eligibility.

The Contracting Officer shall forward the determination of eligibility, after concurrence by legal counsel, to the Head of the Contracting Activity (HCA) for referral to the Department of Labor (DOL) or to the Administrator of SBA if the offeror is a small business.

1522.608-4 Award pending final determination.

If an offeror's eligibility case is pending review by DOL or SBA, the

Contracting Officer shall obtain the concurrence of legal counsel and approval of the Responsible Associate Director (RAD) prior to making an award.

[49 FR 8857, June 15, 1984, as amended at 55 FR 24579, June 18, 1990]

1522.608-6 Postaward.

The Contracting Officer shall follow the procedures in 1522.608-3.

Subpart 1522.8—Equal Employment Opportunity

1522.803 Responsibilities.

If the applicability of E.O. 11246 and implementing regulations are questioned, the Contracting Officer shall route the matter through the RAD to the EPA Office of Civil Rights.

[49 FR 8857, June 15, 1984, as amended at 55 FR 24579, June 18, 1990]

1522.804 Affirmative action programs.

1522.804-2 Construction.

Each contracting office having construction contract responsibility shall maintain a list of geographical areas subject to affirmative action requirements. The list can be obtained from the Office of Contract Compliance Programs, U.S. Department of Labor.

[49 FR 8857, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

Subpart 1522.10—Service Contract Act of 1965

1522.1003 Applicability.

Requests for determinations and exemptions shall be submitted to the Head of the Contracting Activity for signature and transmittal to the Department of Labor in accordance with FAR 22.1003(e).

Subpart 1522.13—Special Disabled and Vietnam Era Veterans

1522.1306 Complaint procedures.

The Contracting Officer shall forward complaints received to the RAD for referral to the Department of Labor.

[49 FR 8857, June 15, 1984, as amended at 55 FR 24579, June 18, 1990]

Subpart 1522.14—Employment of the Handicapped

1522.1403 Waivers.

Contracting Officers shall submit waiver requests to the RAD for processing. Such requests shall be coordinated with the EPA Office of Civil Rights.

[49 FR 8857, June 15, 1984, as amended at 55 FR 24579, June 18, 1990]

1522.1406 Complaint procedures.

Complaints regarding the administration of the Act shall be coordinated with the EPA Office of Civil Rights prior to submission to the Office of Contract Compliance Programs.

PART 1523—ENVIRONMENTAL, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 1523.3—Hazardous Material and Material Safety Data

Sec.
1523.303 Contract clause.
1523.303-70 Protection of human subjects.
1523.303-71 Decontamination of Government-furnished property.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Source: 49 FR 8857, Mar. 8, 1984, unless otherwise noted.

Subpart 1523.3—Hazardous Material and Material Safety Data

1523.303 Contract clause.

1523.303-70 Protection of human subjects.

Contracting Officers shall insert the contract clause at 1552.223-70 when the contract involves human test subjects.

1523.303-71 Decontamination of Government-furnished property.

Contracting Officers shall insert the contract clause at 1552.245-70, Decontamination of Government-Furnished Property, when it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property in the clean-up of hazardous or toxic substances in the environment.

PART 1524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1524.1—Protection of Individual Privacy

Sec.
1524.104 Solicitation provisions.

Subpart 1524.2—Freedom of Information Act

1524.202 Policy.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8858, Mar. 8, 1984, unless otherwise noted.

Subpart 1524.1—Protection of Individual Privacy

1524.104 Solicitation provisions.

The Contracting Officer shall insert the provision at 1552.224-70, Social Security Numbers of Consultants and Certain Sole Proprietors and Privacy Act Statement, in all solicitations.

Subpart 1524.2—Freedom of Information Act

1524.202 Policy.

The EPA policy on disclosure of EPA records, handling of requests under the Freedom of Information Act, and confidentiality of business information is contained in 40 CFR, part 2, Public Information.

PART 1525—FOREIGN ACQUISITION

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8858, Mar. 8, 1984, unless otherwise noted.

Subpart 1525.1—Buy American Act—Supplies

1525.102 Policy.

The following officials are designated to approve determinations required by FAR 25.102(a)(4):

(a) The Chief of the Contracting Office for contracts estimated not to exceed $1 million; and

(b) The Head of the Contracting Activity (HCA) for contracts estimated to exceed $1 million.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1527—PATENTS, DATA, AND COPYRIGHTS

Subpart 1527.70—Rights in Data and Copyrights

Sec.

1527.7000 Scope of subpart.
1527.7001 Definitions.
1527.7002 Policy.
1527.7003 Procedures.
1527.7004 Acquisition of data.
1527.7005 Solicitation provisions and contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 29223, July 19, 1984 and 51 FR 25368, July 14, 1986, unless otherwise noted.

Subpart 1527.70—Rights in Data and Copyrights

1527.7000 Scope of subpart.

This subpart sets forth policies, procedures, and instructions with respect to—

(a) Rights in data and copyrights, and

(b) requirements for data.

1527.7001 Definitions.

Computer software, as used in this subpart, means computer programs, computer data bases, and documentation thereof.

Data, as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidential to contract administration, such as contract cost analysis or any financial, business and management information required for contract administration purposes.

Form, fit, and function data, as used in this subpart, means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

Limited rights, as used in this subpart, means the rights of the Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.

Limited-rights data, as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof. (Contracting Officers may, with the concurrence of the Project Officer, use the following alternate definition: *Limited-rights data*, as used in this subpart, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.)

Restricted computer software, as used in this subpart, means computer software developed at private expense and that is a trade secret, or is commercial or financial and confidential or privileged, or is published copyrighted computer software.

Restricted rights, as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

Unlimited rights, as used in this subpart, means the right of the Government, without additional cost to the Government, to use, disclose reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

1527.7002 Policy.

It is necessary for EPA, in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of its activities; ensure appropriate utilization of the results of research, development and demonstration activities; and meet other programmatic and statutory requirements, including regulatory activities. At the same time, EPA recognizes that its Contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the Contractor's commercial position, and maintain EPA's ability to obtain access to or use of such data. The protection of this data by EPA is necessary to encourage qualified Contractors to participate in EPA programs and apply innovative concepts to such programs. The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the above considerations to strike a balance between EPA's needs and the Contractor's property rights and economic interests.

1527.7003 Procedures.

(a) *General.* All contracts that require data be produced, furnished, or acquired must contain terms that delineate the respective rights and obligations of the Government and the Contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from sealed bidding that require only existing data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1552.227-71, Rights in Data—General, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other clauses or no clause at all, as discussed in paragraphs (c) and (d) of this section.

(b) *Basic Rights in Data Clause.* (1) *Summary.* The clause at 1552.227-71, Rights in Data—General, is structured to strike a balance between EPA's needs in carrying out its mission and programs and the Contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the Contractor to protect from unauthorized use and disclosure data that qualifies as limited-rights data or restricted computer software (see paragraph (b)(2) of this section for an alternate definition of limited-rights data). This clause also specifically delineates the categories or types of data that the Government is to acquire with limited rights (see paragraph (b)(3) of this section). The Contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to the Government; or when EPA has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (b)(4) and (b)(5) of this section.) In addition, this clause enables Contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain license rights in the Government. (See paragraph (b)(6) of this section.) This clause also includes procedures that apply when EPA questions whether notices on data are authorized (see paragraph (b)(7) of this section) or when a Contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (b)(8) of this section); addresses the Contractor's right to release, publish or use certain data involved in contract performance (see paragraph (b)(9) of this section); and provides for the possibility for the Government to inspect certain data at the Contractor's facility (see paragraph (b)(10) of this section).

(2) *Alternate definition of limited-rights data.* In the clause at 1552.227-71, Rights in Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate and with the concurrence of the Project Officer, a Contracting Of-

ficer may determine to use in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, this alternate definition may be used where the principal purpose of a contract does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts, socioeconomic reports, educational material, health and safety information, management analysis, and related matters. This alternate definition of limited-rights data may be used, where appropriate, by using the clause with its Alternate I.

(3) *Unlimited-rights data.* Under the clause at 1552.227-71, Rights in Data—General, the Government acquires unlimited rights in the following data except as provided in paragraph (b)(6) of this section for copyrighted data.

(i) Data first produced in the performance of a contract;

(ii) Form, fit, and function data delivered under a contract;

(iii) Data (except as may be included with restricted computer software) that constitutes manuals or instructional and/or training material delivered under a contract; and

(iv) All other data delivered under the contract unless such data qualifies as limited-rights data or restricted computer software.

If any of the foregoing data is published copyrighted data, the Government acquires it under a copyright license as set forth in paragraph (b)(6) of this section rather than with limited rights or restricted rights.

(4) *Protection of limited-rights data.* (i) The Contractor may protect data (other than unlimited rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1552.227-71, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if the Government specifies the delivery of the data, by delivering such data with limitations on its use and disclosure. These two modes of protection afforded the Contractor (i.e., withhold or deliver with limited rights) are provided for in paragraph (g) of the clause at 1552.227-71, Rights in Data—General. Paragraph (g)(1) of this clause allows the Contractor to withhold limited-rights data and provide form, fit, and function data in lieu thereof. Paragraph (g)(2) to this clause enables the Government selectively to obtain the delivery of withheld or withholdable data with limited rights. The limitations on the Government's right to use and disclose limited-rights data are set forth in a "Limited Rights Notice" that the Contractor is required to affix to such data. The specific limitations in the Notice are described in this section.

(ii) Limited-rights data delivered to the Government with the Limited Rights Notice contained in paragraph (g)(2) of the clause will not, without permission of the Contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited purposes as set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The specific purposes for which the Government may disclose limited-rights data are specified below and appear in the Limited Rights Notice of paragraph (g)(2) of the clause. The Contracting Officer may revise the purposes for disclosing limited-rights data appearing in the clause and as set forth in this section when such revisions are consistent with the Government's needs.

(A) Use by support service Contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use by other contractors participating in the Government's program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such Government.

(iii) As an aid in identifying which, if any, of the data under the contract will qualify as limited-rights data, the provision at 1552.227-70, Notification of Limited-Rights Data and Restricted Computer Software, shall be included in any solicitation containing the clause at 1552.227-71, Rights in Data—General.

(5) *Protection of restricted computer software.* (i) If computer software qualifies as restricted computer software, the clause at 1552.227-71, Rights in Data—General, permits the Contractor to protect such software by either withholding it from delivery and providing form, fit, and function data in lieu thereof; or if the Government specifies delivery of the software, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The two modes of protection afforded the Contractor (i.e., withhold or deliver with restricted rights) are provided for in paragraph (g) of the clause at 1552.227-71, Rights in Data—General. If restricted computer software is needed for use in or with more than one computer, the Contracting Officer shall specify in the contract schedule the number of computers on which the software will be used. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software are set forth in a "Restricted Rights Notice" that the Contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published copyrighted computer software, it is acquired with a restricted copyright license, and without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth in paragraph (b)(5)(ii) of this section.

(ii) Restricted computer software delivered with the Restricted Rights Notice of paragraph (g)(3) of the clause at 1552.227-71, Rights in Data—General, will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be:

(A) Used, or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(B) Used, or copied for use in or with a backup computer if the computer or computers for which it is acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights; and

(E) Disclosed and reproduced by support Contractors or their subcontractors, subject to the same restrictions under which the Government acquired the software.

(iii) The restricted rights set forth in paragraph (b)(5)(ii) of this section are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of paragraph (g)(3) of the clause. However, the Contracting Officer may revise the Restricted Rights Notice of paragraph (g)(3) of the clause to specify either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of paragraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the Contracting Officer, in a collateral agreement incorporated in and made part of the contract. (See paragraph (d)(2) of this section.)

(iv) As an aid in identifying which, if any, of the computer software under the contract will qualify as restricted computer software, the provision at 1552.227-70, Notification of Limited-Rights Data and Restricted Computer Software, shall be included in any solicitation containing the clause at 1552.227-71, Rights in Data—General.

(6) *Copyright data.* (i) *Data first produced in the performance of a contract.* (A) In order to enhance the transfer or dissemination of information produced at Government expense, Contractors are permitted, by paragraph (c)(1) of the clause at 1552.227-71, Rights in Data—General, to establish claim of copyright to scientific and technical articles based on or derived from work performed under the contract and published in academic, professional, or technical journals. However, permission may be granted to establish claim to copyright in all other data in accordance with the procedures set forth below.

(B) Usually permission for a Contractor to establish claim to copyright for data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. Examples of cases when it may not be in the Government's best interests to grant the request are:

(*1*) The data consists of a report that represents the official views of the Agency or that the Agency is required by statute to prepare;

(*2*) The data is intended primarily for internal use by the Government;

(*3*) The data is of the type that the Agency itself distributes to the public under an established program; or

(*4*) If it is deemed inappropriate to provide the Contractor with an essentially exclusive commercial publishing right.

(C) Whenever a Contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in paragraph (c)(1) of the clause at 1552.227-71, Rights in Data—General.

(ii) *Data not first produced in the performance of a contract.* (A) Contractors are not to incorporate in data delivered under contract any data not first produced under the contract with the copyright notice of 17 U.S.C. 401 or 402 without either:

(*1*) Acquiring for, or granting to the Government and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data; or

(*2*) Obtaining permission from the Contracting Officer to do otherwise.

However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in paragraph (g)(3) of the clause at 1552.227-71, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(B) Contractors delivering data with an authorized limited rights or restricted rights notice and a copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the Contractor may be afforded an opportunity to add it in accordance with paragraph (b)(8) of this section. Otherwise, data delivered with a copyright notice of 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable license rights set forth in paragraph (b)(6)(ii) of this section, without disclosure limitations or restrictions.

(C) If Contractor action causes limited-rights or restricted rights data to be published with copyright notice after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the Contractor should advise the Government and request that a copyright notice be placed on the data, and acknowledge that the applicable copyright license set forth in paragraph (b)(6)(ii) of this section applies.

(7) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1552.227-71, Rights in Data—General, the right to either return to the Contractor data containing markings not authorized by that clause, or to cancel or ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the Contractor and affording the Contractor at least 30 days to substantiate the propriety of the markings. The Contracting Officer will also give the Contractor notice of any determination made based on any response by the Contractor. Any such determination to cancel or ignore the markings shall be a final decision under the Contract Disputes Act. Failure of the Contractor to respond to the Contracting Officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings. The Agency reserves the right to modify the above procedures when implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(8) *Omitted or incorrect notices.* (i) Data delivered under a contract containing the clause at 1552.227-71, Rights in Data—General, without a limited rights notice or restricted rights notice, or without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure or use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may within 6 months (or a longer period approved by the Contracting Officer for good cause shown) request permission of the Contracting Officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to so permit if the Contractor—

(A) Identifies the data for which a notice is to be added or corrected;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(ii) The Contracting Officer may also (A) permit correction at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (B) correct any incorrect notices.

(9) *Release, publication and use of data.* (i) In the clause at 1552.227-71, Rights in Data—General, paragraph (d) provides that Contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced or specifically used in the performance of a contract; however, to the extent the Contractor receives or is given access to data that is necessary for the performance of the contract and the data contains restrictive markings, the Contractor agrees to treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(ii) Contracting Officers may, on a case-by-case basis, place further limitations or restrictions on the Contractor's right to use, release to others, reproduce, distribute or publish any data first produced in the performance of the contract.

(iii) The provisions of paragraphs (b)(9) (i) and (ii) of this section are subject to the EPA Order entitled "Publication Review Procedure" and to the clause at 1552.237-70, Contract Publication Review Procedure.

(10) *Inspection of data at the Contractor's facility.* The Government obtains the right to inspect data at the Contractor's facility as provided in paragraph (j) of the clause at 1552.227-71, Rights in Data—General.

The data subject to inspection may be data withheld or withholdable under paragraph (g)(1) of the clause, or any data specifically used in the performance of the contract. Such inspection may be made by the Contracting Officer or other Federal Government employee for the purpose of verifying a Contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised at all reasonable times up to 3 years after acceptance of all items to be delivered under the contract. The Contracting Officer may specify in the contract schedule, data items that are not subject to inspection under paragraph (j).

(c) *Production of special works.* (1) The clause at 1552.227-72, Rights in Data—Special Works, applies to contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. This clause shall be used in contracts for:

(i) The production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(ii) Histories of the Agency, or units thereof;

(iii) Works pertaining to recruiting, morale, training, or career guidance;

(iv) Surveys of Government establishments;

(v) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(vi) The compilation of reports, studies, surveys, or similar documents which are intended for use in connection with Agency regulatory and/or enforcement activities and that do not involve research, development, or experimental work performed by the Contractor;

(vii) The collection of data containing personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(viii) Investigatory reports; or

(ix) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the Contractor), the early release of which could prejudice follow-on acquisition activities or Agency regulatory and/or enforcement activities.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(d) *Acquisition of existing data other than limited-rights data*—(1) *Existing audiovisual and similar works.* The clause at 1552.227-73, Rights in Data—Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are:

(i) Means of exhibition or transmission,

(ii) Time,

(iii) Type of audience, and

(iv) Geographical location.

If the contract requires that works of the type indicated above are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form) the clause at 1552.227-72, Rights in Data—Special Works, is to be used. (See 1527.7003(c).)

(2) *Separate acquisition of existing computer software.* (i) If the contract is for the separate acquisition of existing computer software, no specific contract clause contained in this subpart need be used. However, the contract must specifically address the Government's rights to use, disclose, and reproduce the software and must contain terms obtaining sufficient rights for the Government to fulfill the needs for which the software is being acquired. The restricted rights set forth in paragraph (b)(5) of this section should be used as a guide and are usually the minimum the Government should accept. If the computer software is to be acquired with unlimited rights, the contract must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the form (tapes, punch cards, disc pack, and the like), and all the necessary documentation pertaining thereto. If the acquisition is by lease or license, the disposition of the computer software (by returning to the vendor or destroying) at the end of the term of the lease or license must be addressed. Also, the Contractor must reveal at the time of contracting any conditions on tapes, discs, or the like which limit use or access thereto, including built-in timer mechanisms and/or "self-destruct" devices.

(ii) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, such agreement shall be reviewed to assure that it is consistent with paragraph (d)(2)(i) of this section. Caution should be exercised in accepting a vendor's terms and conditions since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's standard commercial agreement, and the contract shall state this order of precedence.

(iii) If a prime Contractor under a contract containing the clause at 1552.227-71, Rights in Data—General, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to the Government, the Contracting Officer may approve any additions to, or limitations on the restricted rights in the Restricted Rights Notice of paragraph (g)(3) of the clause in a collateral agreement incorporated in and made part of the contract. (See also 1527.7003(b)(5).)

(3) *Other existing works.* (i) Except for existing audiovisual and similar works pursuant to paragraph (d)(1) of this section, and existing computer software pursuant to paragraph (d)(2) of this section, no clause contained in this subpart need be included in (A) contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items) unless reproduction rights of such items are to be obtained; or (B) contracts resulting from sealed bidding that require only existing data to be delivered unless reproduction rights for such data (other than limited-rights data) are to be obtained. If reproduction rights are to be obtained, such rights must be specifically set forth in the contract.

[49 FR 29223, July 19, 1984, as amended at 50 FR 14359, Apr. 11, 1985]

1527.7004 Acquisition of data

(a) *General.* (1) It is important to recognize and maintain the conceptual distinction between contract terms whose purpose is to identify the data required for delivery to, or made available to, the Government (i.e., data requirements); and those contract terms whose purpose is to define the respective rights of the Government and the Contractor in such data (i.e., data rights). This section relates to data requirements; 1527.7003 to the data rights.

(2) It is EPA's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the Contractor, efforts

should be made to keep the contract data requirements to a minimum.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the Contractor in the handling of the data, shall be specified in the contract.

(b) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 1552.227-74, Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under this clause at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The Contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the Contractor may be relieved of retention requirements for specified data items by the Contracting Officer at any time during the retention period required by the clause. Any data ordered under the clause will be subject to the rights in data clause in the contract.

1527.7005 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the provision at 1552.227-70, Notification of Limited-Rights Data and Restricted Computer Software, in any solicitation containing the clause at 1552.227-71, Rights in Data—General. (See 1527.7003(b) (4) and (5).)

(b)(1) The Contracting Officer shall insert the clause at 1552.227-71, Rights in Data—General (see 1527.7003(b)), in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 1527.7003(c), but the clause at 1552.227-71, Rights in Data—General, shall be included in the contract and made applicable to data other than special works, as appropriate;

(ii) For the separate acquisition of existing works, as described in 1527.7003(d);

(iii) For a Small Business Innovative Research (SBIR) contract (see paragraph (h) of this section);

(iv) To be performed outside the United States, its possessions, and Puerto Rico, in which case the Contracting Officer, in conjunction with the patent attorney and the Project Officer, shall develop a clause suitable for the particular acquisition;

(v) For architect-engineer services or construction work, in which case the Contracting Officer, in conjunction with the patent attorney and the Project Officer, shall develop a clause suitable for the particular acquisition. However, the clause at 1552.227-71, Rights in Data—General, may be included in the contract and made applicable to data pertaining to other than architect-engineer services and construction work;

(vi) For the operation of a Government-owned facility to perform research, development or production work, in which case the Contracting Officer, in conjuction with the patent attorney and the Project Officer, shall develop a clause suitable for the particular acquisition.

(2) If a Contracting Officer determines, in accordance with 1527.7003(b)(2), to adopt the alternate definition of "Limited-Rights Data" in paragraph (a) of the clause, the clause shall be used with its Alternate I.

(c) The Contracting Officer shall insert the clause at 1552.227-72, Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Acquisitions to which this clause applies are identified in 1527.7003(c). The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released or reproduced by the Contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(d) The Contracting Officer shall insert the clause at 1552.227-73, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 1527.7003(d)(1). The contract may set forth limitations consistent with the purposes for which the work is being acquired. The clause at 1552.227-72, Rights in Data—Special Works, shall be used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(e) The Contracting Officer shall insert the clause at 1552.227-74, Additional Data Requirements, in all solicitations and contracts (except those using small purchase procedures) containing one of the rights in data clauses at 1552.227. The Contracting Officer may permit the Contractor to identify data the Contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under a rights in data clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data.

(f) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the Contracting Officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1527.7003(d)(2).

(g) While no specific clause of this subpart need be included in contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items) (see 1527.7003(d)(3)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1527.7003(d)(3).)

(h) The Contracting Officer shall insert the clause at 1552.227-75, Rights in Data Developed under Small Business Innovative Research (SBIR) Contracts, in SBIR solicitations and contracts.

PART 1528—BONDS AND INSURANCE

Subpart 1528.3—Insurance

Sec.
1528.311 Solicitation provision and contract clause on liability insurance under costs-reimbursement contracts.
1528.311-70 Comprehensive Environmental Response, Compensation and Liability Act.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8858, Mar. 8, 1984, unless otherwise noted.

Subpart 1528.3—Insurance

1528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1528.311-70 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

(a) The Contracting Officer shall insert, where appropriate, the contract clause at 1552.228-70, Insurance—Liability to Third Persons—Commercial Organizations, when routine (nonemergency) removal or remedial action is being undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

(b) The Contracting Officer shall insert, where appropriate, the contract clause at 1552.228-71, Insurance—Liability to Third Persons—State or Local Governments, in contracts with State or local Governments when routine (nonemergency) removal or remedial action is being undertaken pursuant to the CERCLA.

(c) The Contracting Officer shall insert, where appropriate, the contract clause at 1552.228-72, Insurance—Liability to Third Persons—Commercial Organizations (Emergency), in contracts with commercial organizations when emergency response to hazardous substance releases or potential releases are being undertaken pursuant to the CERCLA.

(d) The Contracting Officer shall insert, where appropriate, the contract clause at 1552.228-73, Insurance—Liability to Third Persons—State or Local Governments (Emergency), in contracts with State or local Governments when emergency response to hazardous substance releases or potential releases are being undertaken pursuant to the CERCLA.

PART 1529—TAXES

Subpart 1529.3—State and Local Taxes

1529.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.
1529.401-70 Cost-reimbursable type contracts.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Source: 54 FR 49998, Dec. 4, 1989, unless otherwise noted.

Subpart 1529.3—State and Local Taxes

1529.303 Application of State and local taxes to Government contractors and subcontractors.

Contractors are responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available, unless the Contracting Officer determines under FAR 31.205-41(b)(3) that the administrative burden outweighs the corresponding benefit. Contractors are responsible for ensuring that subcontractors also seek and obtain such exemptions, if available.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.

1529.401-70 Cost-reimbursable type contracts.

Contracting Officers shall insert the clause at 1552.229-70 in all solicitations and contracts when it is anticipated a cost-reimbursable type contract shall be used or a contractor or subcontractor shall be reimbursed for materials at cost.

PART 1530—COST ACCOUNTING STANDARDS

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Source: 49 FR 8858, Mar. 8, 1984, unless otherwise noted.

Subpart 1530.3—CAS Contract Requirements

1530.304 Waiver.

The Responsible Associate Director (RAD) has authority to waive Cost Accounting Standards Board requirements.

[49 FR 8858, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

PART 1531—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Source: 49 FR 8858, Mar. 8, 1984, unless otherwise noted.

Subpart 1531.1—Applicability

1531.101 Objectives.

Requests for individual and class deviations shall be submitted through the Procurement Policy Staff to the Responsible Associate Director (RAD). The RAD approves requests for individual deviations. The RAD reviews and forwards requests for class deviations to the Head of the Contracting Activity (HCA). The HCA coordinates approval of requests for class deviations and Agency supplements with the Chairperson of the Civilian Agency Acquisition Council.

[55 FR 24580, June 18, 1990]

PART 1532—CONTRACT FINANCING

Sec.

1532.000 Scope of part.

Subpart 1532.1—General

1532.102 Description of contract financing methods.
1532.111 Contract clauses.
1532.170 Forms.

Subpart 1532.4—Advance Payments

1532.402 General.
1532.407 Interest.
1532.409-2 Recommendation for disapproval.
1532.412 Contract clause.

Subpart 1532.8—Assignment of Claims

1532.805 Procedure.
1532.805-70 Forms.

Subpart 1532.9—Prompt Payment

1532.906 Contract clauses.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Source: 49 FR 8858, Mar. 8, 1984, unless otherwise noted.

1532.000 Scope of part.

This part implements and supplements FAR part 32 and provides policies and procedures for contract financing and other payment matters. This includes—

(a) Progress payments;

(b) Advance payments;

(c) Prompt Payment Act implementation;

(d) Assignment of claims; and

(e) Selected clauses and forms.

Subpart 1532.1—General

1532.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under EPA contracts or subcontracts for construction and alteration of repair of buildings, structures, or other real property. For all other contracts, progress payment provisions shall be based on costs, except that progress payments based on a percentage or stage of completion may be authorized by the Responsible Associate Director (RAD) when a determination is made that progress payments based on costs cannot be practically employed and that there are adequate safeguards provided for the administration of the progress payments.

[49 FR 8858, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

1532.111 Contract clauses.

The Contracting Officer shall insert the clause at 1552.232-73, Payments—Fixed Rate Services Contract, in solicitations and indefinite delivery/indefinite quantity contracts when services are being acquired on a fixed-rate basis.

1532.170 Forms.

(a) EPA Form 1900-10 Contractor's Cumulative Claim and Reconciliation, at 1553.232-74, shall be used for an accounting of the cumulative charges and costs for cost-reimbursement contracts from inception of the contract to completion. It shall be submitted by the Contractor upon submission of the completion voucher.

(b) EPA Form 1900-34, Guide for the Preparation of Contractor's Claims for Reimbursement of Costs and Fees Under Cost-Reimbursement Type Contracts, at 1553.232-75, shall be inserted or incorporated by reference in all cost-reimbursement type contracts.

(c) EPA Form 1900-34A, Guide for the Preparation of Contractor's Claims for Reimbursement Under Cost-Plus-Award-Fee (CPAF) Type Contracts, at 1553.232-76, shall be inserted or incorporated by reference in all CPAF contracts.

Subpart 1532.4—Advance Payments

1532.402 General.

(a) The Chief of the Contracting Office is responsible for making findings and determinations supporting the use of advance payments and approving contract terms concerning advance payments.

(b) The Contracting Officer prepares findings and determinations and other contractual data with respect to advance payments and coordinates proposed advance payment authorizations with the finance office.

1532.407 Interest.

The Chief of the Contracting Office is authorized to approve advance payments without interest.

1532.409-2 Recommendation for disapproval.

The procedures for recommending disapproval of advance payments are the same as that for recommending approval (see 1532.402).

1532.412 Contract clause.

The Chief of the Contracting Office may waive the countersignature requirements. Waivers will be documented in findings and determinations which authorize advance payments.

Subpart 1532.8—Assignment of Claims

1532.805 Procedure.

1532.805-70 Forms.

(a) EPA Form 1900-3, Assignee's Release, at 1553.232-70 is required to be submitted by the assignee for cost-reimbursement contracts prior to final payment under the contract.

(b) EPA Form 1900-4, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts, at 1553.232-71 must accompany the assignee's release prior to final payment under cost-reimbursement contracts.

(c) EPA Form 1900-5, Contractor's Assignment of Refunds, Rebates and Credits, at 1553.232-72 must be prepared by the Contractor prior to final payment under cost-reimbursement contracts and must accompany the Contractor's Release.

(d) EPA Form 1900-6, Contractor's Release, at 1553.232-73 must be submitted by the Contractor prior to final payment under cost-reimbursement contracts.

Subpart 1532.9—Prompt Payment

SOURCE: 54 FR 9215, Mar. 6, 1989, unless otherwise noted.

1532.908 Contract clauses.

The clause or alternates at 1552.232-70 are required in all acquisitions except those within the small purchase limitation. The clause at 1552.232-70 shall be used in solicitations and contracts when the EPA accounting information to be shown on contractor invoices includes the document control number and account number. Alternate I shall be used in solicitations and contracts when the EPA accounting information to be shown on contractor invoices includes only the account number. Alternate II shall be used when no EPA accounting information is to be shown on contractor invoices. The Contracting Officer shall work with the EPA office initiating the procurement to determine the appropriate clause to be used.

[55 FR 38807, Sept. 21, 1990]

PART 1533—PROTESTS, DISPUTES AND APPEALS

Sec.
1533.000 Scope of part.

Subpart 1533.1—Protests

1533.103 Protests to the Agency.
1533.103-70 Time for filing.

Subpart 1533.2—Disputes and Appeals

1533.203 Applicability.
1533.209 Suspected fraudulent claims.
1533.211 Contracting Officer's decision.
1533.212 Contracting Officer's duties upon appeal.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 50 FR 14359, Apr. 11, 1985, unless otherwise noted.

1533.000 Scope of part.

This part implements and supplements FAR part 33 and prescribes policies and procedures for processing protests and contract disputes and appeals.

Subpart 1533.1—Protests

1533.103 Protests to the Agency.

1533.103-70 Time for filing.

(a) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In acquisitions where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(b) In cases other than those covered in paragraph (a) of this section, protests shall be filed not later than ten working days after the basis of protest is known or should have been known, whichever is earlier.

Subpart 1533.2—Disputes and Appeals

1533.203 Applicability.

Pursuant to an interagency agreement between the EPA and the Department of the Interior Board of Contract Appeals (IBCA), the IBCA will hear appeals from final decisions of EPA Contracting Officers issued pursuant to the Contract Disputes Act. The rules and regulations of the IBCA appear in 43 CFR part 4.

1533.209 Suspected fraudulent claims.

The Contracting Officer shall refer matters relating to suspected fraudulent claims under the Contract Disputes Act to the Inspector General through the Responsible Associate Director (RAD).

[50 FR 14359, Apr. 11, 1985, as amended at 55 FR 24579, June 18, 1990]

1533.211 Contracting Officer's decision.

Final decisions of Contracting Officers under the Contract Disputes Act shall be reviewed by legal counsel and the Chief of the Contracting Office prior to issuance.

1533.212 Contracting Officer's duties upon appeal.

Upon receipt of notice of appeal, the Contracting Officer shall take the following actions:

(a) *Submission of the notice of appeal to IBCA.* (1) When a notice of appeal in any form has been received, the Contracting Officer shall endorse on it the date of the notice's mailing (or the date of receipt if the notice was otherwise conveyed) and within 5 days shall forward the notice of appeal to the IBCA by certified mail. The Contracting Officer shall verbally notify the legal counsel that the appeal has been received.

(2) A notice of appeal, whether filed within the time prescribed by the "Disputes" clause or not, shall be submitted to the IBCA. The Contracting Officer shall forward promptly every notice of appeal to IBCA even if the intention to appeal is only vaguely or indirectly expressed, and regardless of the form of the notice, or of the method by which the notice was furnished to the Contracting Officer.

(3) Copies of the notice of appeal shall be sent simultaneously to the Policy and Quality Assurance Branch, Procurement and Contracts Management Division and to legal counsel.

(b) *Establishment and submission of appeal files to IBCA.* (1) Following receipt of a notice of appeal, or advice that an appeal has been filed, the Contracting Officer shall promptly compile the appeal file (copies of all documents pertinent to the appeal), and four duplicate appeal files. The file shall include the following:

(i) The findings of fact and the Contracting Officer's final decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(ii) The contract, and pertinent plans, specifications, amendments, and change orders;

(iii) Correspondence between the parties and other data pertinent to the appeal;

(iv) Transcripts of any testimony taken during the course of proceedings and affidavits, or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board;

(v) Such additional information as may be considered material.

(2) In addition to the above, the Contracting Officer shall prepare an index listing each document included in the file submitted to the IBCA, and place copies of such index in the submission and duplicate files.

(3) Contracting Officers, in making the submission, may not submit original ducuments which are a part of the official contract file. Copies of the pertinent documents shall be submitted.

(4) Within 15 days of receipt or advice of a notice of appeal, the official and two duplicate files shall be forwarded through legal counsel to the Procurement and Contracts Management Division for review. The Procurement and Contracts Management Division shall forward the official appeal file to the IBCA within the 30 day time limitation set forth in 43 CFR 4.104(a). One duplicate file shall be retained by the Contracting Officer, one by the Procurement and Contracts Management Division, and one by legal counsel.

(5) If for any reason the Contracting Officer anticipates that a timely submission cannot be made, he/she shall immediately advise legal counsel by telephone of the extent of the anticipated delay and the reasons therefor. However, every effort will be exerted to make timely submissions.

(6) At the time of transmittal of the appeal file to the Board, the Contracting Officer shall notify the appellant of the transmittal and provide a copy of the appeal file to the appellant. Within the transmittal to the IBCA, the Contracting Officer shall indicate that the appellant has been provided with a copy of the appeal file.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1534—MAJOR SYSTEM ACQUISITION

Sec.

1534.000 Scope of part.

1534.000-70 General requirements of OMB Circular A-109.

1534.000-71 Definitions.

1534.003 Responsibilities.

1534.004 Acquisition strategy.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8860, Mar. 8 1984, unless otherwise noted.

1534.000 Scope of part.

This part implements and supplements FAR part 34 and prescribes EPA policies, procedures, and acquisition strategy for use in acquiring major systems consistent with the requirements of OMB Circular A-109, Major System Acquisitions.

1534.000-70 General requirements of OMB Circular A-109.

OMB Circular A-109 establishes policies to be followed by executive branch agencies in the acquisition of major systems. The policies of the Circular are to assure the effectiveness and efficiency of the process of acquiring major systems. Major system acquisition objectives include assuring that each major system fulfills a mission need and that an acquisition strategy is tailored for each program. Management structures are required, with the designation of an acquisition executive, to intergrate and unify the agency's major systems acquisitions. Clear lines of authority, responsibility, and accountability are required. Program managers are to be designated for each major system acquisition program and given a writen charter of his/her authority, responsibility, and accountability for accomplishing program objectives.

1534.000-71 Definitions.

For the purpose of implementing OMB Circular A-109, the following definitions apply:

(a) *Acquisition Executive* is the Assistant Administrator for Administration and Resources Management.

(b) *Agency component* or major organizational subdivision of an agency is hereby construed in EPA to be the Offices of the Assistant, Associate, and Regional Administrators.

(c) *Agency Component Head* is the Assistant or Associate Administrator or the Regional Administrator responsible for the Agency component defined in paragraph (b) of this section.

(d) *Major system* is hereby further defined as:

(1) Any system whose estimated cumulative cost to EPA in current year dollars will equal $50 million or more during its research, development, test and evaluation (RDT&E) and/or production (procurement) phases; or

(2) Any acquisition so designated by the Administrator, Deputy Administrator, any one of the Assistant or Associate Administrators, or any one of the Regional Administrators that: (i) Is directed at and critical to fulfilling an Agency mission; (ii) entails the allocation of relatively large resources; (iii) warrants special management attention; and (iv) has been recommended by the head of an operating activity, e.g., laboratory director, office director, division director, and approved by one of the individuals listed in (c) above. Assistant or Associate Administrators or Regional Administrators may designate an acquisition as major only for those acquisitions within their respective programs.

(e) *Program Manager* is that individual meeting the qualifications required by OMB Circular A-109 and receiving a written charter to manage acquisition of a major system.

[49 FR 8860, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1534.003 Responsibilities.

As required by OMB Circular A-109, the following responsibilities shall be carried out by the officials designated below.

(a) The Administrator shall:

(1) Ensure general compliance with OMB Circular A-109, as implemented within the Environmental Protection Agency;

(2) Retain the four key decision points identified in paragraph 9. of OMB Circular A-109;

(3) Early in the system acquisition process, communicate to Congress the relationship of major system acquisition programs to Agency needs. This communication should follow the requirements of OMB Circular A-109; and

(4) Ensure compliance with paragraph 14., 15.a., and 15.b. of OMB Circular A-109.

(b) The Deputy Administrator shall:

(1) Establish and maintain clear lines of authority, responsibility, and accountability for management of major system acquisition programs; abolish and preclude management layering and the placing of excessive reporting requirements on program managers and contractors; and

(2) Where more than one Agency component is involved in the acquisition of a major system, determine and assign the roles and responsibilities of each component.

(c) The Assistant Administrator for Administration and Resources Management shall:

(1) Ensure that each major system fulfills a mission need;

(2) Ensure that needs are expressed in mission terms and not equipment terms;

(3) Ensure appropriate trade-offs among investment costs, ownership costs, schedules, and performance characteristics;

(4) Integrate and unify the management process and monitor implementation of the policy and practices set forth in OMB Circular A-109.

(5) Approve program manager designation; and

(6) Ensure compliance with paragraphs 17 a, b, and c of OMB Circular A-109.

(d) The Assistant, Associate, and Regional Administrators, as Component Heads, shall: nominate, to the Acquisition Executive, a program manager for each major system acquisition program and issue a written charter of his/her authority, responsibility, and accountability for accomplishing approved program objectives. The program manager nominated must met the qualification criteria prescribed in OMB Circular A-109 for project managers and the nomination is subject to approval by the Acquisition Executive.

(e) The Agency Comptroller shall:

(1) Provide budget support to the Administrator to ensure implementation of the Administrator's responsibilities under paragraphs (4), (5), and (6) of OMB Circular A-109.

(2) Monitor for compliance with OMB Circular A-76 as applicable.

(3) As part of the Agency budget process, develop, implement, and accomplish acquisition planning built on an analysis of Agency missions.

(f) The Deputy Assistant Administrator for Administration and Resources Management, as Senior Agency Administrative Officer, shall:

(1) Provide to the program manager the business management, procurement, and contracting portions of the acquisition strategy or approve those developed by the program manager;

(2) Provide to the program manager contract placement and procurement management support and necessary procurement training;

(3) Develop system acquisitions orientation program; and

(4) Coordinate cost estimating capability required by paragraph 7g of OMB Circular A-109.

(g) The Program Manager shall:

(1) Express program objectives in mission terms and not in equipment terms;

(2) Place emphasis on the initial activities of the system acquisition process to allow and encourage innovation and competition in creating, exploring, and developing alternative system design concepts to meet needs and achieve objectives;

(3) Ensure that the major system operates effectively in its intended environment and demonstrates an acceptable level of performance and reliability;

(4) Provide strong checks and balances by ensuring adequate system test and evaluation: and

(5) Tailor and acquisition strategy for the major system to be acquired and refine the strategy as the program

proceeds. The business management, procurement and contracting portions of the acquisition strategy will be acquired from, or approved by, the Deputy Assistant Administrator for Administration and Resources Management.

[49 FR 8860, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1534.004 Acquisition strategy.

(a) OMB Circular A-109 provides that, when acquiring major systems Federal agencies will express needs in mission terms based on an analysis of an agency's mission. For purposes of implementing the Circular, the following guidance on the EPA mission, its research and development mission areas, and possible major system areas is provided.

(1) *Agency mission*. The Environmental Protection Agency is a regulatory agency whose mission is to protect the health and welfare of the American people by controlling pollution hazards. EPA's pollution control responsibilities are generally coordinated with and in partnership with State and local Governments. In carrying out its mission, the Agency:

(i) Sets and enforces hazardous waste management and toxic substances standards;

(ii) Establishes and enforces air and water quality standards and emission limitations for sources of pollutants;

(iii) Monitors the quality of the environment;

(iv) Controls the use and availability of pesticides;

(v) Sets and enforces noise-producing product standards and sets general ambient standards for radiation;

(vi) Endeavors to improve the planning for the management and disposal of environmental pollutants;

(vii) Conducts research and demonstration projects; and

(viii) Provides financial and technical assistance to State and local Governments.

(2) *Research and development mission areas*. In all phases of the planning process, research and development activities are grouped into five major program areas. These are:

(i) Health and ecological effects;

(ii) Energy;

(iii) Industrial processes;

(iv) Public sector activities; and

(v) Monitoring and technical support.

These will be considered the mission areas for the purposes of this acquisition strategy.

(3) *Possible major system areas in EPA*. The following are major systems to which the acquisition strategy applies when they meet the criteria prescribed in 1534.000-71(d).

(i) Automatic data processing system which results in the continuous and repetitive output of data, reports, charts, etc., and may include hardware, equipment software, construction, or other improvements of real property.

(ii) Federal construction which includes the construction of a facility for the use of the Environmental Protection Agency.

(iii) Improvement which includes improvement(s) to a Federal facility under the complete control and jurisdiction of the Environmental Protection Agency.

(iv) Real property acquisition which includes the acquisition of land and/or facility for the use of the Environmental Protection Agency.

(v) Demonstration project which is a full-scale engineering demonstration of a new or improved pollution control or waste management process.

(b) The following procedures shall be followed in major systems acquisition:

(1) *System acquisition process initiation*. (i) The need for a major system acquisition will be initially reflected in the agency budget preview process. The need will be separately and distinctly highlighted as a major system acquisition and will address the following elements.

(A) How does the major system fulfill a mission need?

(B) What is the major system priority in terms of other mission needs, by fiscal year?

(C) What are the resource requirements to initially develop the system as well as to operate and maintain the system; and

(D) What alternative(s) to the major system will be considered?

(ii) In the OMB and congressional submissions, in addition to discussing the needs under the appropriate budget activity, a special section will be included for major system acquisitions.

(iii) There may be situations when there is the need for a major system prior to and after the normal preview and budget process. In such cases, the need will be transmitted separately to OMB and to Congress for the upcoming budget year.

(2) *Program manager charter*—(i) *Initiating the charter:* Upon identification of a major system acquisition, the head of the EPA component or the designated component head, when more than one EPA component is involved, shall nominate a program manager for approval by the Acquisition Executive. Upon approval of the program manager by the Acquisition Executive, the head of the component, or the designated component head in the case of a multi-component program, shall prepare, negotiate, and issue a program manager charter. The charter shall be jointly approved by the head of each EPA component when more than one EPA component is involved.

(ii) *Charter outline:* The program manager charter shall, as a minimum, set forth the following:

(A) The name of the individual assigned as the program manager.

(B) The EPA component elements, or parts thereof, for which the program manager will be responsible.

(C) The interface, relationship, and direct communication channels between the program manager and the participating organizations identified that will be required to participate in fulfilling the goals of the major system acquisition.

(D) Provisions for control by the program manager of the allocation and utilization of resources approved by the Acquisition Executive for the major system acquisition. Obligations of the Government resulting from contracts awarded in support of the major system acquisition shall be the responsibility of the Contracting Officer supporting the program manager.

(E) The primary location of the program management office and the identified organizations that will provide the administrative support specified.

(F) Any special delegations of authority within the authority of the component head and the Acquisition Executive that are considered necessary for the program manager.

(G) Program objectives stated in mission terms rather than equipment terms.

(H) Reporting requirements of the program manager to the component head and the Acquisition Executive.

(iii) *Charter implementation.* The program manager in implementing the charter shall, as a minimum, provide to the Acquisition Executive for approval a major system acquisition plan to accomplish the major system objective set forth in the program manager charter. The plan shall, as a minimum, include interim goals, milestones, decision points and projected resource requirements for the entire acquisition process. In addition, the plan should determine the need for contractor participation in the acquisition process and the methodology to be used in monitoring the accomplishment of the acquisition goals such as monitoring:

(A) Schedules and costs input/output;

(B) Contingency trade-off, including shifts in resources and decisions to contract;

(C) The need to refine the plan as the program proceeds; and

(D) Contractor performance.

(iv) *Charter review.* The Acquisition Executive shall periodically review all major system acquisition programs established in EPA, and shall terminate use of this management technique totally, or in stages, as the program achieves the principal goals established in the charter and approved acquisition plan.

(3) *Congressional notification.* (i) Congress will be notified in the normal budget process of a major system acquisition, thereby conforming with OMB Circulars A-10 and A-11. This will be applicable to supplemental requests or to budget amendments. Procedures for notifying the authorizing committees of Congress will be arranged by OMB.

(ii) If a decision is made to proceed with the actual acquisition of a system without competitive selection and demonstration, the congressional authorization and appropriation committees will be notified.

(4) *Commercial or industrial products or services.* In the implementation of a major system, the provisions related to OMB Circular A-76 (Revised) are applicable.

PART 1535—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

1535.007 Solicitations.

1535.007-70 Contract clauses.

The following clauses are prescribed for research and development (R&D) contracts. They may also be used in other than R&D contracts when applicable (see 1537.110).

(a) The Contracting Officer shall insert the contract clause at 1552.235-70, Screening Business Information for Claims of Confidentiality, in contracts when the Contracting Officer has determined that during performance of this contract, the Contractor may be required to collect information to perform the work required under this contract. Some of the information may consist of trade secrets or commercial or financial information that would be considered as proprietary or confidential by the business that has the right to the information.

(b) The Contracting Officer shall insert the contract clause at 1552.235-71, Treatment of Confidential Business Information, in contracts when the Contracting Officer has determined that in the performance of a contract EPA may furnish confidential business information to the Contractor that EPA obtained under the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 301 et seq.), of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.). EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B require that the Contractor agree to the clause entitled "Treatment of Confidential Business Information" before any confidential business information may be furnished to the Contractor.

(c) The Contracting Officer shall insert the contract clause at 1552.235-72, Data Security—FIFRA and/or TSCA Confidential Business Information, when the contract involves access to confidential business information related to either the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Toxic Substances Control Act (TSCA) and the Treatment of Confidential Business Information clause (1552.235-71) and Screening Business Information for Claims of Confidentiality clause (1552.235-70) are included.

[49 FR 8862, Mar 8, 1984; 49 FR 24734, June 15, 1984]

PART 1536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1536.2—Special Aspects of Contracting for Construction

Sec.
1536.201 Evaluation of contractor performance.
1536.203 Government estimate of construction costs.
1536.209 Construction contracts with architect-engineer firms.

Subpart 1536.3—Special Aspects of Sealed Bidding in Construction Contracting

1536.303 Invitations for bids.
1536.303-70 Additive or deductive items.

Subpart 1536.5—Contract Clauses

1536.521 Specifications and drawings for construction.
1536.570 Additive or deductive items.

Subpart 1536.6—Architect-Engineer Services

1536.602 Selection of firms for architect-engineer contracts.
1536.602-2 Establishment of evaluation boards.
1536.602-4 Selection authority.
1536.602-5 Short selection processes for contracts not to exceed $10,000.
1536.604 Performance evaluation.

Sec.
1536.605 Government estimate for architect-engineer work.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8863, Mar. 8, 1984, unless otherwise noted.

Subpart 1536.2—Special Aspects of Contracting for Construction

1536.201 Evaluation of contracting performance.

(a) The Contracting Officer will obtain input from the Project Officer on the contractor's performance. The Contracting Officer will prepare the contractor performance report as prescribed in FAR 36.201 within two weeks after final acceptance of the work or contract termination.

(b) Prior to submitting any report or unsatisfactory performance to the reviewing official, the Contracting Officer will advise the contractor of any proposed unsatisfactory rating (see FAR 36.201(a)(3)).

(c) The official at one level above the Contracting Officer will review each performance report.

(d) The Contracting Officer will forward the original of the performance report to the Quality Assurance Section, Procurement and Contracts Management Division. The Quality Assurance Section will file the form in the contractor performance evaluation files which it maintains.

(e) The Quality Assurance Section will review the report when it is received and compare it with recent evaluations of that contractor. If the Quality Assurance Section discerns a pattern of unsatisfactory performance, it will notify the Contracting Officer for possible action, which may include referral of the matter to the Compliance Staff or to the Inspector General for investigation.

(f) Information from the performance report shall not be released outside of the Agency, except to other Government agencies at their written request, and on condition that the information will not be made available outside the Government. Requests from non-Government sources for information from performance reports shall be processed in accordance with EPA's Freedom of Information Act procedures at 40 CFR part 2.

1536.203 Government estimate of construction costs.

The overall amount of the Government's estimate shall not be disclosed under any circumstance to persons other than Government personnel whose official duties, in the judgment of the Contracting Officer, require knowledge of the estimate.

1536.209 Construction contracts with architect-engineer firms.

No contract for the construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates, except with the approval of the Responsible Associate Director (RAD).

[49 FR 8863, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

Subpart 1536.3—Special Aspects of Sealed Bidding in Construction Contracting

1536.303 Invitations for bids.

1536.303-70 Additive or deductive items.

Prior to the issuance of an Invitation for Bids, the Contracting Officer shall ascertain that adequate funds have been certified as being available for the proposed procurement action. However, if funds available appear to be insufficient for all features of the Government's requirement, the Contracting Officer shall insert in the Invitation provisions for a base bid and for one or more additive or deductive items. If the Invitation provides for additive or deductive items, the Contracting Officer shall state an order of priority for the additive or deductive items in the schedule and, prior to opening of bids, determine and record the amount of funds available (see 1536.570 and 1552.236-71).

Subpart 1536.5—Contract Clauses

1536.521 Specifications and drawings for construction.

The Contracting Officer shall insert the clause at 1552.236-70, Samples and

Certificates, in soliciations and contracts when a fixed price construction contract is expected to exceed the small purchase limitation. The clause may be inserted in solicitations and contracts when the contract is expected to be within the small purchase limitation.

1536.570 Additive or deductive items.

As prescribed in 1536.303-70, in those circumstances where funds certified as available appear to be insufficient for all features of the Government's requirements, insert the clause at 1552.236-71.

[49 FR 8863, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

Subpart 1536.6—Architect-Engineer Services

1536.602 Selection of firms for architect-engineer contracts.

1536.602-2 Establishment of evaluation boards.

(a) The Environmental Protection Agency Architect-Engineer Evaluation Board is established as a central permanent board located at Headquarters EPA under authority delegated to the Director, Procurement and Contracts Management Division. The Board shall perform all architect-engineer evaluations on an agency basis. The Agency Board shall be composed of not less than three nor more than five voting members and one non-voting advisory member from the contracting office. The following constitutes the minimum composition of the Board:

(1) *Member and Chairman.* Chief, Facilities Engineering Section, Facilities Engineering and Real Estate Branch, Facilities and Support Services Division;

(2) *Member.* A professional engineer or architect from EPA Headquarters to be designated by the Chairman;

(3) *Member.* A program official initiating the requirement or a designated representative; and

(4) *Advisory Member.* A Contracting Officer or his/her representative.

(b) The Director, Procurement and Contracts Management Division, may appoint either one or two additional voting members as may be appropriate for a particular project.

(c) In the event of an emergency or extended absence, a member may designate, in writing, with the concurrence of the Chairman, an alternate experienced in architecture, engineering, or construction to serve in his absence.

(d) The duties of the advisory member shall include, but not be limited to, the following:

(1) Assuring that the criteria set forth in the public notice is applied in the evaluation process; and

(2) That actions taken during the evaluation process do not compromise subsequent procurement actions.

1536.602-4 Selection authority.

For acquisitions with a potential value exceeding $500,000, the RAD shall serve as the EPA selection authority. For acquisitions with a potential value of $500,000 or less, the Chief of the Contracting Office shall determine the selection authority.

[55 FR 24580, June 18, 1990]

1536.602-5 Short selection processes for contracts not to exceed $10,000.

Authorization is given for use of both short selection processes permitted by FAR 36.602-5.

1536.604 Performance evaluation.

Evaluation of architect-engineer contracts shall be in accordance with the procedures prescribed in 1536.201 and FAR 36.604.

1536.605 Government estimate for architect-engineer work.

The overall amount of the Government's estimate shall not be disclosed under any circumstance to persons other than Government personnel whose official duties, in the judgment of the Contracting Officer, require knowledge of the estimate.

PART 1537—SERVICE CONTRACTING

Subpart 1537.1—Service Contracts—General

Sec.

1537.110 Solicitation provisions and contract clauses.

Sec.

Subpart 1537.2—Consulting Services

1537.200 Scope of subpart.
1537.202 General.
1537.203 Types of consulting services.
1537.205 Management controls.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8864, Mar. 8, 1984, unless otherwise noted.

Subpart 1537.1—Service Contracts—General

1537.110 Solicitation provisions and contract clauses.

The following clauses are prescribed for service contracts. They may also be used in research and development contracts when applicable (see 1535.007-70).

(a) The Contracting Officer shall insert the clause at 1552.237-70, Contract Publication Review Procedures, in solicitations and contracts when the products of the contract are subject to contract publication review.

(b) The Contracting Officer shall insert the clause at 1552.237-71, Technical Direction, in cost-reimbursement type solicitations and contracts.

(c) The Contracting Officer shall insert the clause at 1552.237-72, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor key personnel.

(d) The Contracting Officer shall insert the clause at 1552.237-73, Consultant Services and Consent, in solicitations and contracts where the services of consultants are required.

(e) The Contracting Officer shall insert the clause at 1552.237-74, Publicity, in solicitations and contracts pertaining to the removal or remedial activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

(f) The Contracting Officer shall insert the clause at 1552.237-75, Paperwork Reduction Act, in solicitations and contracts requiring the collection of identical information from (10) or more public respondents.

Subpart 1537.2—Consulting Services

1537.200 Scope of subpart.

This subpart provides additional examples of services that are considered consulting services and management controls for the acquisition of such services.

1537.202 General.

This subpart applies only to the types of services shown in FAR 37.203 and those shown in 1537.203 below. It does not apply to professional and management services unless the Contracting Officer has defined such service requirements to be consulting services.

1537.203 Types of consulting services.

The following supplements the examples cited in FAR 37.203(a).

(a) Examples of services that are considered consulting services are provided below:

(1) Advice on the feasibility of instituting a transfer pricing system in the Procurement and Contracts Management Division and advice on how such a system could improve management of contracts by procurement personnel.

(2) Analysis of EPA's management and agency services support functions and advice on how to improve the performance of these functions, such as through reorganization of the Office of Administration.

(3) Analysis of alternative strategies for implementing requirements of the Hazardous Substance Response Program regulations and advice on resource needs associated with each alternative strategy.

(4) Analysis of EPA procedures for drafting and issuing permits to municipal and nonmunicipal dischargers and advice on how to simplify these procedures.

(5) Advice on how to coordinate and integrate toxic substance policies and activities with those of other EPA programs.

(6) Advice on the different strategies for implementing merit pay at EPA and conduct of one 2-hour training course on one of these strategies. The primary purpose of the contract is to

provide advice on the strategies for implementing merit pay.

(7) External peer review of programs, projects, and publications for the Office of Research and Development (ORD) laboratories to assure conceptual soundness of scientific methods and validity of results. The objective is to obtain highly competent technical examinations and analyses of the research planned or performed by ORD laboratories in order to obtain the benefit of additional viewpoints and perspectives and to advise the ORD staff on the state-of-the-art in areas that impact laboratory research programs. Three separate types of reviews are required.

(i) Program reviews and analyses which include critiques of laboratory research programs and advice on upgrading the program direction or management.

(ii) Project reviews and analyses which focus on the scientific/technical details of a single project with an in-depth examination of the project plan and the progress being made in pursuing the plan, a review of the data analyses, and an interpretation of the data analyses.

(iii) Review and analysis of research results for publication clearance in accordance with the "ORD Technical Information Policy and Guide."

(b) Examples of services which are not considered consulting services are provided below:

(1) Regulatory impact analyses, including economic impact analyses of effluent guidelines on specific industries, such as the organic chemicals industry.

(2) Analyses required by the Clean Water Act to determine economically achievable standards.

(3) Design and implementation of a computerized management information system for the Office of Administration.

(4) Development of sampling and analytical techniques to identify and measure pollutants in the ambient air.

(5) Conduct of a training course for Project Officers with particular emphasis on the Project Officer's role in the source evaluation and selection process.

(6) Development of a manual on security procedures for handling confidential business information.

(7) Conduct of a study to assess the consequences of pollutant loadings in the Chesapeake Bay.

(8) Evaluation of the strategy proposed by the Personnel Management Division for implementing merit pay at EPA with the primary purpose being the conduct of 15 separate eight-hour training sesions on how to draft critical job elements and performance standards.

1537.205 Management controls.

(a) In addition to those controls set forth in FAR 37.205(b) the office initiating the Procurement Request/Order (EPA Form 1900-8) for consulting services shall prepare the justification for such services, obtain appropriate approvals, and distribute copies of the approved justification as prescribed in paragraph (b) below. The justification shall be set forth in an attachment to EPA Form 1900-8, Procurement Request/ Order. The Agency is required to report on the planned use of consulting services, including planned obligations and justifications of needs, in the Agency's formal budget request to the Office of Management and Budget. If the proposed acquisition was reported in the budget request, the planned obligation for the procurement as set forth in the budget request shall be indicated. Whenever the estimated value of the proposed acquisition varies significantly from the planned obligation set forth in the budget request or in those cases where the proposed aquistion for management consulting services was not reported in the budget request, an explanation shall be included in the justification.

(b) The program office initiating the requirement shall obtain approval for use of consulting services as follows:

(1) Requirements that may be purchased pursuant to the small purchase procedures shall be approved at a level above the organization initating the requirement or at the second level when award is to be made during the fourth fiscal quarter.

(2) All other requirements shall be approved by the Associate, Assistant or Regional Administrator.

[49 FR 8864, Mar. 8, 1984, as amended at 52 FR 8073, Mar. 16, 1987]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1542—CONTRACT ADMINISTRATION

Sec.
1542.000 Scope of part.

Subpart 1542.7—Indirect Cost Rates

1542.700 Scope of subpart.
1542.705 Final indirect cost rates.
1542.705-1 Contracting Officer's determination procedure.
1542.705-70 Solicitation and contract clause.
1542.708 Quick-closeout procedures.

Subpart 1542.12—Novation and Change of Name Agreements

1542.1200 Scope of subpart.
1542.1202 Responsibility for executing agreements.
1542.1203 Processing agreements.

AUTHORITY: Sec. 205(c), 63 Stat. [illegible] as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8865, Mar. 8, 1984, unless otherwise noted.

1542.000 Scope of part.

This part implements FAR part 42 and prescribes general policies and procedures for performing contract administration functions and related audit services.

Subpart 1542.7—Indirect Cost Rates

1542.700 Scope of subpart.

This subpart implements and supplements FAR subpart 42.7 and prescribes policies and procedures for establishing: (a) Billing rates and (b) final indirect costs.

1542.705 Final indirect cost rates.

The EPA shall use the Contracting Officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates.

1542.705-1 Contracting officer's determination procedure.

(a) *Applicability and responsibility.* The Cost Policy and Rate Negotiation Section (CPRN), Procurement and Contracts Management Division, is responsible for negotiating indirect cost rates in accordance with EPA Contracting Officer determination procedures.

(b) *Procedures.* FAR 42.703 provides that a single agency shall be responsible for establishing indirect cost rates (final and billing) for each business unit, which shall be binding on all Government agencies and their contracting activities. Depending upon the particular contractor involved, EPA may or may not be the cognizant Agency for establishing indirect cost rates. The following procedures shall be followed in establishing and incorporating final indirect cost rates into contracts.

(1) *Where EPA is the cognizant agency.* (i) The Cost Policy and Rate Negotiation Section (CPRN) shall coordinate with the audit activity and the affected Federal Government agencies to develop a negotiation position, conduct negotiations with the Contractor, prepare the rate agreement, and be responsible for the execution of the agreement as provided in FAR 42.705-1(b).

(ii) CPRN shall obtain from the Contractor a Certificate of Current Cost or Pricing Data where required by FAR 15.804-4.

(iii) CPRN shall distribute executed copies of the rate agreement to all EPA contracting officers (as applicable), the three cost advisory offices at Headquarters, Research Triangle Park, and Cincinnati, the finance office, other interested parties (e.g., audit offices, Office of the Inspector General), and to each affected Federal agency.

(iv) CPRN shall maintain, as required by FAR 4.801, a file for all indirect cost rates (final and billing).

(v) Upon receipt of the executed agreement, each EPA contracting activity shall place a copy in each official contract file.

(2) *Where EPA is not the cognizant agency.* (i) CPRN shall coordinate with audit and/or the cognizant agency to develop a negotiation positon and to receive a copy of an executed rate agreement.

(ii) CPRN shall distribute copies of the executed rate agreement to all EPA contracting offices (as applicable), the three cost advisory offices, the finance office, and other interested parties (e.g., Office of the Inspector General).

(iii) CPRN shall maintain, as required by FAR 4.801, a file for all indirect cost rates (final and billing).

(iv) Upon receipt of the executed agreement, each EPA contracting office shall place a copy in each official contract file.

(3) *Newly awarded contracts.* The EPA contract specialist, with the assistance of the cost advisory offices, shall place the established billing rate(s) in newly awarded contracts. Billing rates, like final indirect cost rates, may be established or revised by CPRN, the auditing activity, or another Federal Government agency.

1542.705-70 Solicitation and contract clause.

The Contracting Officer shall insert the clause in 1552.242-70, Indirect Costs, in solicitations and contracts where indirect costs apply.

1542.708 Quick-closeout procedures.

(a) The Contracting Officer or contract administrator, as appropriate, may use quick-closeout procedures for settlement of indirect costs on cost-reimbursement contracts prior to a final audit certification when the conditions specified by FAR 42.708(a) (1) through (3) have been met and: (1) The contract has an estimated cost, excluding fee of $500,000, or less, and (2) the cumulative estimated costs of one Contrator's contracts closed out using these quick-closeout procedures do not exceed $1,000,000 per contract office.

(b) Under the quick-closeout procedures, if final rates have been negotiated for all but one of the fiscal years and 25 percent or less of the total costs claimed are for that fiscal year, the Contracting Officer or contract administrator shall close the contract using one of the following rates:

(1) The previous year final rates.

(2) The subsequent year final rates.

(3) Provisional rates, if less than the rates in paragraph (b) (1) or (2) above.

(4) Any other rates claimed by the Contractor if they are less than those in paragraph (b) (1), (2), or (3) above.

(c) When the final rates have not been negotiated and the procedures in paragraph (b) of this section do not apply, the Contracting Officer or contract administrator shall request the Cost Policy and Rate Negotiation Section (CPRN), Procurement and Contracts Management Division to negotiate or to obtain final rates.

Subpart 1542.12—Novation and Change of Name Agreements

1542.1200 Scope of subpart.

This subpart implements FAR subpart 42.12 and provides policies and procedures for executing and processing novation and change-of-name agreements.

1542.1202 Responsibility for executing agreements.

(a) Any EPA contracting office upon being notified of a successor in interest to, or change of name of, one of its Contractors shall promptly report such information by memorandum to the Director, Procurement and Contracts Management Division (PCMD).

(b) To avoid duplication of effort on the part of EPA contracting offices in preparing and executing agreements to recognize a change of name or successor in interest, only one supplemental agreement will be prepared to effect necessary changes for all contracts between EPA and the Contractor involved. The Chief of the Procurement Policy Staff, PCMD, will, in each case, designate the Contracting Office responsible for taking all necessary and appropriate action with respect to either recognizing or not recognizing a successor in interest, or recognizing a change of name agreement.

[49 FR 8865, Mar. 8, 1984, as amended at 55 FR 24580, June 18, 1990]

1542.1203 Processing agreements.

(a) The responsible contracting office shall:

(1) Obtain from the Contractor a list of all affected contracts, the names and addresses of the contracting offices responsible for these contracts,

and the required documentary evidence.

(2) Verify the accuracy of the list of contracts through the Contract Information System.

(3) Draft and execute a supplemental agreement to one of the contracts affected but covering all applicable outstanding and incomplete contracts affected by the transfer of assets or change of name. A supplemental agreement number need not be obtained for contracts other than for the one under which the supplemental agreement is written. The supplemental agreement will contain a list of the contracts affected and, for distribution purposes, the names and addresses of the contracting offices having contracts subject to the supplemental agreement.

(b) Agreements and supporting documents covering successors in interest shall be reviewed for legal sufficiency by legal counsel.

(c) After execution of the supplemental agreement, the designated office shall forward an authenticated copy of the supplemental agreement to the Director, Procurement and Contracts Management Division, and to each affected contract office.

PART 1545—GOVERNMENT PROPERTY

Sec.
1545.000 Scope of part.

Subpart 1545.1—General

1545.106 Government property clauses.

Subpart 1545.3—Providing Government Property to Contractors

1545.309 Providing Government production and research property under special restrictions.

Subpart 1545.4—Contractor Use and Rental of Government Property

1545.403 Rental—Use and Charges clause.

Subpart 1545.5—Management of Government Property in the Possession of Contractors

1545.502 Contractor responsibility.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8866, Mar. 8, 1984, unless otherwise noted.

1545.000 Scope of part.

This part implements FAR part 45, Government Property, and sets forth policy and procedures with respect to providing property for use by contractors in performance of EPA contracts.

Subpart 1545.1—General

1545.106 Government property clauses.

(a) In accordance with 1523.303-71, the Contracting Officer shall insert the contract clause at 1552.245-70 when it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property in the cleanup of hazardous or toxic substances in the environment.

(b) The Contracting Officer shall insert the contract clause at 1552.245-71, Government-Furnished Data, in any contract in which the Government is to furnish data to the Contractor. The data to be provided shall be identified in the clause.

(c) The Contracting Officer shall insert the contract clause at 1552.245-72, Fabrication or Acquisition of Nonexpendable Property, in all cost-reimbursement type contracts or contracts with cost-reimbursement portions.

[49 FR 8866, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

Subpart 1545.3—Providing Government Property to Contractors

1545.309 Providing Government production and research property under special restrictions.

Government production and research property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or plant equipment, shall not be installed or constructed on land not owned by the Government in such fashion as to be nonseverable unless the contract under which the property is provided contains—

(a) One of the provisions in FAR 45.309(a);

(b) A requirement that the Government will have the right to abandon in place all nonseverable Government property provided; and

(c) A requirement that the Government will not have any obligation to disassemble or remove the property or to restore or to rehabilitate the premises on which the property is located.

Subpart 1545.4—Contractor Use and Rental of Government Property

1545.403 Rental—Use and Charges clause.

The Responsible Associate Director (RAD) is the designee for determinations that rent may be charged on the basis of use, or some other equitable basis, rather than a rental period for production and research property classes other than plant equipment as indicated in FAR 45.403.

[49 FR 8866, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990]

Subpart 1545.5—Management of Government Property in the Possession of Contractors

1545.502 Contractor responsibility.

Guidance regarding Contractor responsibility for management and control of Government property in their possession is contained in the EPA "Guide for Control of Government Property By Contractors," which is available from the Facilities and Support Services Division.

PART 1546—QUALITY ASSURANCE

Sec.
1546.000 Scope of part.

Subpart 1546.2—Contract Quality Requirements

1546.201 General.

Subpart 1546.7—Warranties

1546.704 Authority for use of warranties.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8867, Mar. 8, 1984, unless otherwise noted.

1546.000 Scope of part.

This part implements and supplements FAR part 46 and provides EPA policy and procedures on contract quality assurance requirements and warranties. It includes selected clauses and guidance on their use.

Subpart 1546.2—Contract Quality Requirements

1546.201 General.

(a) The Contracting Officer shall ensure that Procurement Request/Orders (EPA Form 1900-8) in excess of $25,000 be accompanied by a Quality Assurance (QA) review form for those acquisitions in the object classifications prescribed in Chapter 2 of the "Contracts Management Manual" which covers procurement request preparation.

(b) Where the QA review form provides for the submission of a QA program plan in an offeror's proposal, the Contracting Officer shall use the provision shown in 1552.246-70 in the solicitation.

(c)(1) The Contracting Officer shall include the provision contained in 1552.246-71 in the solicitation when a QA project plan is required as part of the proposal submission. The QA project plan is a specific delineation of an offeror's approach for accomplishing the QA specification in a Statement of Work.

(2) When a QA project plan is not a required part of the technical proposal, the Contracting Officer may require the QA project plan as a deliverable under the contract by use of the clause in 1552.246-72.

Subpart 1546.7—Warranties

1546.704 Authority for use of warranties.

The Contracting Officer shall ensure that the use of a warranty clause in a contract has the concurrence of the Project Officer.

PART 1548—VALUE ENGINEERING

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8867, Mar. 8, 1984, unless otherwise noted.

Subpart 1548.1—Policies and Procedures

1548.102 Policies.

The EPA is exempt from the requirements of FAR part 48 as authorized in FAR 48.102(a).

SUBCHAPTER H—CLAUSES AND FORMS

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1552.2—Texts of Provisions and Clauses

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1552.245-70 Decontamination of government property.
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1552.245-72 Fabrication or acquisition of nonexpendable property.
1552.246-70 Quality assurance (QA) Program Plan.
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1552.246-72 Quality Assurance (QA) Project Plan documentation.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8867, Mar. 8, 1984, unless otherwise noted.

Subpart 1552.2—Texts of Provisions and Clauses

1552.203-70 Current/former agency employee involvement certification.

As prescribed in 1503.603, insert the following solicitation provision in all EPA solicitation documents for sole source acquisitions.

CURRENT/FORMER AGENCY EMPLOYEE INVOLVEMENT CERTIFICATION (APR 1984)

The offeror (quoter) hereby certifies that:

(a) He is [ ] is not [ ] a former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote).

(b) He does [ ] does not [ ] employ or propose to employ a current/former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote) and who has been or will be involved, directly or indirectly, in developing or negotiating this offer (quote) for the offeror (quoter), or in the management, administration or performance of any contract resulting from this offer (quote).

(c) He does [ ] does not [ ] employ or propose to employ as a consultant or subcontractor under any contract resulting from this offer (quote) a current/former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote).

(d) A former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote) or such former employee's spouse or minor child does [ ] does not [ ] own or substantially own or control the offeror's (quoter's) firm.

(e) See EPAAR part 1503 for definitions of the terms "regular" and "special employee."

(End of provision)

[49 FR 8867, Mar. 8, 1984, as amended at 50 FR 14360, Apr. 11, 1985]

1552.208-70 Printing.

As prescribed in 1508.870, insert the following contract clause in all type contracts which require printing, duplication, binding, reproduction, and related services and are subject to the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

PRINTING (APR 1984)

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 units of only one page, or less than 25,000 units in the aggregate of multiple pages, such pages not exceeding a maximum image size of 10¾ by 14¼ inches, will not be deemed to be printing.

(End of clause)

1552.209-70 Organizational conflict of interest notification.

As prescribed in 1509.508(b), insert the following solicitation provision in all solicitations except:

(a) When specific notices or clauses are required per EPAAR part 1509;

(b) When the procurement is with another federal agency (however, the provision is included in solicitations issued under the Small Business Administration's (SBA) 8(a) program); and

(c) When the procurement is accomplished through small purchase procedures (use is optional for small purchases).

ORGANIZATIONAL CONFLICT OF INTEREST NOTIFICATION (APR 1984)

(a) The prospective Contractor certifies, to the best of its knowledge and belief, that it is not aware of any information bearing on the existence of any potential organizational conflict of interest. If the prospective Contractor cannot so certify, it shall provide a disclosure statement in its proposal

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which describes all relevant information concerning any past, present, or planned interests bearing on whether it (including its chief executives and directors, or any proposed consultant or subcontractor) may have a potential organizational conflict of interest.

(b) Prospective Contractors should refer to FAR subpart 9.5 and EPAAR part 1509 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest.

(c) If the Contracting Officer determines that a potential conflict exists, the prospective Contractor shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

1552.209-71 Organizational conflicts of interest.

As prescribed in 1509.508(c), insert the following contract clause in all contracts except:

(a) When specific clauses are required per EPAAR part 1509;

(b) When the procurement is with another Federal agency (however, the provision is included in contracts with SBA and its subcontractor under the 8(a) program); and

(c) When the procurement is accomplished through small purchase procedures (use is optional for small purchases).

ORGANIZATIONAL CONFLICTS OF INTEREST (APR 1984)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in FAR subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neturalize the actual or potential conflict.

(c) Remedies—The EPA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misprepresented relevant information to the Contracting officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions which shall conform substantially to the language of this clause, including this paragraph (d).

(End of clause)

1552.209-72 Organizational conflict of interest certification.

As prescribed in 1509.508(b), insert the following provision in all solicitation documents when applicable.

ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION (APR 1984)

The offeror [ ] is [ ] is not aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror is aware of information bearing on whether a potential conflict may exist, the offeror shall provide a disclosure statement describing this information. (See section L of the solicitation for further information.)

(End of provision)

1552.210-70 Reports of work.

As prescribed in 1510.011-70, insert one of the contract clauses in this subsection when the contract requires the delivery of reports. The basic clause should be used when reports are specified in a contract attachment. Alternate I is to be used to specify reports in the contract schedule.

REPORTS OF WORK (APR 1984)

The Contractor shall prepare and deliver reports in accordance with Attachment.* * *

The OMB clearance number for progress reports delivered under this contract is 2030-0005 with an expiration date of May 31, 1986.

(End of clause)

REPORTS OF WORK (APR 1984) ALTERNATE I (APR 1984)

The Contractor shall prepare and deliver the below listed reports to the designated addressees. Each report shall cite the contract number and identify the Environmental Protection Agency as the sponsoring agency.

The OMB clearance number for progress reports delivered under this contract is 2030-0005 with an expiration date of May 31, 1986. Required reports are:

Reports description	No. copies	Addressees

(End of clause)

1552.210-71 Monthly progress report—short form.

As prescribed in 1510.011-71, insert the following contract clause when monthly progress reports are required and the duration of the contract is contemplated to be less than six months.

MONTHLY PROGRESS REPORT—SHORT FORM (APR 1984)

The Contractor shall furnish . . . copies of monthly progress reports briefly stating the progress made, including the percentage of the project completed or of work ordered and completed as of the end of the reporting period. Specific discussions shall include difficulties encountered and remedial action taken during the reporting period and anticipated activity during the subsequent reporting period. If this contract includes cost-reimbursement elements, the report shall also provide the cumulative amount of funds expended from the effective date of the contract through the last day of the reporting period, as well as the amount of funds expended expressed as a percentage of the total contract funds. The reports shall be submitted to the following addressees on or before the . . . of each month following the first complete calendar month of the contract. Distribute reports as follows:

No. of copies	Addressee
	Project Officer.
	Contracting Officer.

(End of clause)

1552.210-72 Monthly progress report—cost-type contract.

As prescribed in 1510.011-72, insert the following clause:

MONTHLY PROGRESS REPORT—COST TYPE CONTRACT (SEP 1990)

The Contractor shall furnish . . . copies of a combined monthly technical and financial progress report briefly stating the progress made, including the percentage of the project completed during the reporting period. If work is ordered using work assignments include the percentage of work ordered and completed during the reporting period. Specific discussions shall include difficulties encountered and remedial action taken during the reporting period and anticipated activity during the subsequent reporting period. In addition, the report shall specify contract financial status as follows:

(a) For term from contracts, provide:

(1) Cumulative totals for the contract amounts obligated, amounts claimed, and remaining available funds. Available funds are defined as the total obligated amount less total amounts claimed.

(2) Cumulative labor hours and dollars, broken out by prime and subcontractor labor category, expended from the effective date of the contract through the last day of the current reporting month. Include a cumulative incurred cost per direct labor hour average computation and compare the result to the cumulative average cost per direct labor hour derived from the estimated cost of the contract.

(3) Actual costs and direct labor hours expended during the current reporting month.

(4) Estimated costs and direct labor hours to be expended during the next reporting period.

(5) Actual costs and direct labor hours incurred for each work assignment issued and estimates of costs and man hours required to complete each work assignment.

(b) For completion form contracts, provide a graph using a vertical axis for dollars and a horizontal axis for time increments that shows the actual and projected rate of expenditures against the total estimated cost of the contract.

(c) This submission does not change the notification requirements of the "Limitation of Cost" or "Limitation of Funds" clauses requiring separate written notice to the Contracting Officer.

(d) The reports shall be submitted to the following addressees on or before the —— of each month following the first complete calendar month of the contract. Distribute reports as follows:

No. of copies	Addressee
	Project Officer.
	Contracting Officer.

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(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984, as amended at 55 FR 39622, Sept. 28, 1990]

1552.210-73 Monthly Progress Report—Time and Materials or Labor Hour Contract.

As prescribed in 1510.011-73, insert the following clause:

MONTHLY PROGRESS REPORT—TIME AND MATERIALS OR LABOR HOUR CONTRACT (SEP 1990)

(a) The contractor shall furnish . . . copies of a combined monthly technical and financial progress report briefly stating the progress made, including the number of hours expended during the reporting period and cumulatively, and the percentage of the project work remaining. Specific discussions shall include difficulties encountered and remedial action taken during the reporting period and anticipated activity during the subsequent reporting period.

(b) The report shall include the following financial information:

(1) Cumulative totals for the contract amounts obligated, amounts claimed, and remaining available funds. Available funds are defined as the total obligated amount less total amount claimed;

(2) Cumulative labor hours and dollars, broken out by prime and subcontractor labor category, expended from the effective date of the contract through the last day of the current reporting period;

(3) Actual costs and labor hours expended during the current month;

(4) Estimated costs and labor hours to be expended during the next reporting period.

(c) The reports shall be submitted to the following addresses on or before the ___ of each month following the first complete calendar month of the contract. Distribute reports as follows:

No. of copies	Addresses
....	Project Officer.
....	Contracting Officer.

(End of Clause)

[55 FR 39622, Sept. 28, 1990]

1552.210-74 Monthly Progress Report—Indefinite Delivery/Indefinite Quantity Fixed-Rate Services Contract.

As prescribed in 1510.011-74, insert the following clause:

MONTHLY PROGRESS REPORT—INDEFINITE DELIVERY/INDEFINITE QUANTITY FIXED-RATE SERVICES CONTRACT (SEP 1990)

(a) The contractor shall furnish . . . copies of a combined monthly technical and financial progress report briefly stating the progress made, including the percentage of the work ordered and completed during the reporting period. Specific discussions shall include difficulties encountered and remedial action taken during the reporting period and anticipated activity during the subsequent reporting period.

(b) The report shall include the following financial information for each delivery order:

(1) Delivery order number, date and title;

(2) EPA client organization;

(3) Period of performance, including explanations for any extensions that may be needed;

(4) Number of hours, loaded rate applied, and corresponding total dollar amount expended for each employee (by name) within all labor categories employed during the reporting period;

(5) Cumulative number of hours and corresponding dollar amounts expended to date by labor category;

(6) Cumulative listing of all invoices submitted including invoice number, date submitted, period of invoice, total amount of invoice, and amount paid;

(7) Any accumulated charges that have not been invoiced and reasons why they have not been billed;

(8) Estimated costs and labor hours to be expended during the next reporting period.

(c) The reports shall be submitted to the following addresses on or before the ___ of each month following the first complete calendar month of the contract. Distribute reports as follows:

No. of copies	Addresses
....	Project Officer.
....	Contracting Officer.

(End of Clause)

[55 FR 39622, Sept. 28, 1990]

1552.210-75 Working files.

As prescribed in 1510.011-74, insert the following clause in all applicable EPA contracts.

WORKING FILES (APR 1984)

The Contractor shall maintain accurate working files (by task or work assignment) on all work documentation including calculations, assumptions, interpretations of regulations, sources of information, and other raw data required in the performance of this contract. The Contractor shall provide the information contained in its working files upon request of the Contracting Officer.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990]

1552.210-76 Legal analysis.

As prescribed in 1510.011-75, insert this contract clause when it is determined that the contract involves legal analysis.

LEGAL ANALYSIS (APR 1984)

The Contractor shall furnish to the Project Officer one (1) copy of any draft legal analysis. The Government will provide a response to the Contractor within thirty (30) calendar days after receipt. The Contractor shall not finalize the analysis until the Government has given approval.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990]

1552.210-77 Final reports.

As prescribed in 1510.011-76, insert this contract clause when a contract requires a draft and a final report.

FINAL REPORTS (APR 1984)

(a) "Draft Report"—The Contractor shall submit to the Project Officer —— copies of the draft final report on or before —— (date) —— The Contractor shall furnish to the Contracsting Officer a copy of the letter transmitting the draft. The draft shall be typed double-spaced or space-and-a-half and shall include all pertinent material required in the final report. The Government will review for approval or disapproval the draft and provide a response to the Contractor within —— calendar days after receipt. If the Government does not provide a response within the allotted review time, the Contractor immediately shall notify the Contracting Officer in writing.

(b) "Final Report"—The Contractor shall deliver a final report on or before the last day of the period of performance specified in the contract. Distribution is as follows:

No. of copies	Addressee
1	EPA Library.
1	Contracting Officer.
1	Project Officer.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990]

1552.210-78 Management consulting services.

As prescribed in 1510.011-77, insert the following contract clause in all contracts for management consulting services.

MANAGEMENT CONSULTING SERVICES (APR 1985)

All reports containing recommendations to the Environmental Protection Agency shall include the following information on the cover of each report: (a) Name and business address of the contractor; (b) contract number; (c) contract dollar amount; (d) whether the contract was subject to full and open competition or a sole source acquisition; (e) name of the EPA Project Officer and the EPA Project Officer's office identification and location; and (f) date of report.

(End of clause)

[50 FR 14360, Apr. 11, 1985; 50 FR 15425, Apr. 18, 1985. Redesignated at 55 FR 39622, Sept. 28, 1990]

1552.212-70 Level of effort—cost-reimbursement term contract.

As prescribed in 1512.104(a), insert the following contract clause in cost-reimbursement term contracts including cost contracts without fee, cost-sharing contracts, cost-plus-fixed-fee (CPFF) contracts, cost-plus-incentive-fee contracts (CPIF), and cost-plus-award-fee contracts (CPAF).

LEVEL OF EFFORT—COST-REIMBURSEMENT TERM CONTRACT (APR 1984)

(a) The Contractor shall perform all work and provide all required reports within the level of effort specified below. The Government hereby orders——direct labor hours for the base period, which represents the Government's best estimate of the level of effort to fulfill these requirements.

(b) Direct labor includes personnel such as engineers, scientists, draftsmen, technicians, statisticians, and programmers and not support personnel such as company management, typists, and key punch operators even though such support personnel are normally treated as direct labor by the Contractor. The level of effort specified in paragraph (a) includes Contractor, subcontractor, and consultant labor hours.

(c) If the Contractor provides less than 90 percent of the level of effort specified for the base period or any optional period ordered, an equitable downward adjustment of the fixed fee, if any, for that period will be made. The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached. However, this additional effort shall not result in any increase in the fixed fee, if any. If this is a cost-plus-incentive-fee (CPIF) contract, the term "fee" in this paragraph means "base fee and incentive fee." If this is a cost-plus-award-fee (CPAF) contract, the term "fee" in this paragraph means "base fee and award fee."

(d) If the level of effort specified to be ordered during a given base or option period is not ordered during that period, that level of effort may not be acumulated and ordered during a subsequent period.

(e) These terms and conditions do not supersede the requirements of either the "Limitation of Cost" or "Limitation of Funds" clauses.

(End of clause)

1552.212-71 Work assignments.

As prescribed in 1512.104(b), insert the follwing contract clause in cost-reimbursement type term form contracts when work assignments are to be used.

WORK ASSIGNMENTS (APR 1984)

(a) The contractor shall perform work under this contract as specified in written work assignments issued by the Contracting Officer.

(b) Each work assignment will include (1) a numerical designation, (2) the estimate of required labor hours, (3) the period of performance and schedule of deliverables, and (4) the description of the work.

(c) The Contractor shall acknowledge receipt of each work assignment by returning to the Contracting Officer a signed copy of the work assignment within —— calendar days after its receipt. The Contractor shall begin work immediately upon receipt of a work assignment. Within —— calendar days after receipt of a work assignment, the Contractor shall submit —— copies of a work plan to the Project Officer and —— copies to the Contracting Officer. The work plan shall include a detailed technical and staffing plan and a detailed cost estimate. Within —— calendar days after recipt of the work plan, the Contracting Officer will provide written approval or disapproval of it to the Contractor. If the Contractor has not received approval on a work plan within —— calendar days after its submission, the Contractor shall stop work on that work assignment. Also, if the Contracting Officer disapproves a work plan, the Contractor shall stop work until the problem causing the disapproval is resolved. In either case, the Contractor shall resume work only when the Contracting Officer finally approves the work plan.

(d) This clause does not change the requirements of the "Level of Effort" clause, nor the notification requirements of either the "Limitation of Cost" or "Limitation of Funds" clauses.

(e) Work assignments shall not allow for any change to the terms or conditions of the contract. Where any language in the work assignment may suggest a change to the terms or conditions, the Contractor shall immediately notify the Contracting Officer.

(End of clause)

1552.213-70 Notice to suppliers of equipment.

As prescribed in 1513.507(b), the Contracting Officer shall insert the following contract clause in orders for or lease of commercially available equipment.

NOTICE TO SUPPLIERS OF EQUIPMENT (APR 1984)

(a) It is the general policy of the Environmental Protection Agency that Contractor or vendor prescribed leases or maintenance agreements for equipment will NOT be executed.

(b) Performance in accordance with the terms and conditions of the vendor's commercial lease, or customer service maintenance agreement, unless specified in the Schedule, may render the vendor's performance unacceptable, thereby permitting the Government to apply such contractual remedies as may be permitted by law, regulation, or the terms of this order.

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.214-70 Past performance.

As prescribed in 1514.210-6(a), insert this solicitation provision in all inivitations for bids:

PAST PERFORMANCE (APR 1984)

Bidders shall provide as part of their bids submission: a list of Government contracts received during the last two years for identical or similar work to that being procured under this solicitation. For each contract, state the contract number, the Government agency placing the contract, the type of contract, and a brief description of the work.

(End of provision)

[49 FR 8867, Mar. 8, 1984, as amended at 50 FR 14360, Apr. 11, 1985]

1552.214-71 Contract award—other factors—formal advertising.

As prescribed in 1514.201-6(b), insert the following solicitation provision in invitations for bids (IFB) when it is appropriate to describe other factors that will be used in evaluating bids for award. This provision is used to describe the other factors mentioned in the solicitation provisions "Contract Award—Formal Advertising" (FAR 52.214-10), and "Contract Award—Construction" (FAR 52.214-19). All other evaluation provisions in the IFB (e.g., evaluation of options) should be cross-referenced in this provision. The other factors set forth in the provision should represent a consolidated statement of the exact basis upon which bids will be evaluated for award.

CONTRACT AWARD—OTHER FACTORS—FORMAL ADVERTISING (APR 1984)

The Government will award a contract resulting from this solicitation as stated in the "Contract Award" provision. The other factors that will be considered are:

____

____

____

(End of provision)

1552.215-70 EPA source evaluation and selection procedures—negotiated procurements.

As prescribed in 1515.605, insert the following solicitation provision in Requests for Proposals.

EPA SOURCE EVALUATION AND SELECTION PROCEDURES—NEGOTIATED PROCUREMENTS (APR 1984)

(a) The Government will select an offeror for negotiation and award in accordance with FAR part 15 and the EPA Source Evaluation and Selection Procedures in EPAAR part 1515 (48 CFR part 1515). The significant features of this procedure are:

(1) The Government will evaluate cost or price in accordance with FAR part 31. In addition the Government will evaluate proposals to determine cost realism. Cost realism relates to an offeror's demonstrating that the proposed cost or price provides an adequate reflection of its understanding of the requirements of this solicitation.

(2) The Technical Evaluation Panel will evaluate and score technical proposals against the specified Technical Evaluation Criteria.

(b) In addition to evaluation of the previously discussed elements, the Government will consider in any award decision the responsibility factors set forth in FAR part 9.

(End of provision)

1552.215-71 Evaluation factors for award.

As prescribed in 1515.605, insert one of the following solicitation provisions in Requests for Proposals. The first provision states that technical quality is more important than cost or price. The Alternate I provision states that cost or price is more important than technical quality provided an offeror's technical proposal establishes that the minimum needs of the Government can be met. The "other factors" listed in paragraph (a) of the provisions may be revised at the discretion of the Contracting Officer. Technical evaluation criteria should be prepared in accordance with FAR 15.605 and inserted into paragraph (b) of the provision.

EVALUATION FACTORS FOR AWARD (APR 1984)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price and other factors considered. For this solicitation, technical quality is more important than cost or price. The Government will consider other factors, as listed below in descending order of importance, secondary to both technical quality and cost or price:

(1) Small business concerns which are also labor surplus area concerns;

(2) Other small business concerns;

(3) Other concerns which are also labor surplus area concerns;

(4) Record of past performance.

As proposals become more equal in their technical merit, the evaluated cost or price becomes more important. As the technical merit and the evaluated cost of price become essentially equal, other factors may become a determining factor.

(b) Technical Evaluation Criteria——

____

(End of provision)

EVALUATION FACTORS FOR AWARD (APR 1984)

Alternate I (Apr 1984)

(a) The Government will make award to the responsible offeror whose offer conforms to the solicitation and is most advantageous to the Government, cost or price, technical quality and other factors considered. The Government will award a contract only to concerns whose technical proposals establish that they can meet the minimum needs of the Government. However, among concerns in this category, the Government considers cost or price more important than relative technical quality differences.

The Government will consider other factors, as listed below in descending order of importance, secondary to both cost or price or technical quality:

(1) Small business concerns which are also labor surplus area concerns;

(2) Other small business concerns;

(3) Other concerns which are also labor surplus area concern;

(4) Record of past performance.

As the evaluated cost/price becomes more equal, relative technical quality becomes more important. As the evaluated cost/price and technical merit become essentially equal, other factors may become a determining factor.

(b) Technical Evaluation Criteria——

____

(End of provision)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.215-72 Past performance.

As prescribed in 1515.407(a), insert this solicitation provision in all negotiated solicitation documents.

PAST PERFORMANCE (APR 1984)

Offerors shall provide the following required information as part of their initial submission:

(a) A list of Governmenmt contracts received during the last two years for identical or similar work to that being procured under this solicitation. For each contract, state the contract number, the Government agency placing the contract, the type of contract, and a brief description of the work.

(b) If the offeror has overrun any cost-type Government contract or subcontract in the last two years, list the agency funding the work, the contract number, the amount of the contract, the overrun, and the reason for the overrun.

(End of provision)

1552.215-73 Instructions for the preparation of technical and cost or pricing proposals.

As prescribed in 1515.407(a), insert the following solicitation provision in all negotiated solicitation documents. Enter any special technical proposal instructions in (a)(2) or insert "none."

INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND COST OR PRICING PROPOSALS (APR 1984)

(a) Technical proposal instructions.

(1) Submit your technical proposal as a separate part of the total proposal package. Omit all cost or pricing details from the technical proposal. Include the following elements in your techical proposal (see also the Statement of Work and the Technical Evaluation Criteria):

(i) Technical approach;

(ii) Technical management;

(iii) Key technical personnel;

(iv) Assumptions, deviations, and exceptions (as necessary); and

(v) Additional information.

(2) Special technical proposal instructions.

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____

(b) Cost or pricing proposal instructions.

Your cost or price proposal shall be specific, complete in every detail, and separate from your technical proposal.

(1) General—Submit cost or pricing data on Standard Form 1411, Contract Pricing Proposal Cover Sheet, prepared in accordance with FAR 15.804-6, FAR Table 15-3, and the following:

(i) Clearly identify separate cost or pricing data associated with any:

(A) Options to extend the term of the contract;

(B) Options for the Government to order incremental quantities; and/or

(C) Major tasks, if required by the special instructions.

You may indicate the above cost or price detailed data in narrative form or on a spread sheet, provided that all cost or pricing data is adequately and clearly described. Place recap/summary information on the SF 1411.

(ii) Clearly identify all costs and data in support of the proposed cost/price.

(iii) Submit a current financial statement, including a balance sheet and a statment of profit and loss for the last completed fiscal year. Specify resources available to perform the contract without assistance from any outside source. If sufficient resources are not available, indicate in your proposal the amount required and the anticipated source (i.e., bank loans, letter or lines of credit, etc.).

(iv) If other division, subsidiaries, a parent or affiliated companies will perform work or furnish materials under this proposed contract, please provide the name and location of such affiliate and your intercompany pricing policy.

(v) If the contract schedule includes a "Fixed Rates for Services" clause, please provide in your cost proposal a schedule duplicating the format in the clause and include your proposed fixed hourly rates per labor category for the base and any option contract periods.

(vi) If the contract includes the clause at EPAAR 1552.232-73 "Payments—Fixed-Rate Services Contract," or the clause at FAR 52.232-7 "Payments Under Time and Materials and Labor-Hour Contracts," include in your cost proposal any burden rate you will apply to materials, other direct costs, or subcontracts. The Government will include the burden factor as part of its cost proposal evaluation.

(2) Direct Labor.

(i) Attach support schedules indicating types or categories of labor together with labor hours for each category, indicating rate of compensation. Indicate the method used in computing the labor rate. If individual labor rates are proposed, give employee names.

(ii) Indicate whether current rates or escalated rates are used. If escalation is included, state the degree (percent) and methodology.

(iii) State whether any additional direct labor (new hires) will be required during the performance period of this acquisition. If so, state the number required.

(iv) With respect to educational institutions, include the following information for those professional staff members whose salary is expected to be covered by a stipulated salary support agreement pursuant to OMB Circular A-21.

(A) Individual's name;

(B) Annual salary and the period for which the salary is applicable;

(C) List of other research projects or proposals for which salary is allocated, and the proportionate time charged to each; and

(D) Other duties, such as teaching assigments, adminstrative assigments, and other institutional activities. Show the proportionate time charged to each.

(3) Indirect costs (overhead, general, and administrative expenses). Unless your proposed indirect rate(s) have recently been accepted by a contracting agency of the Government, provide detailed supporting computations. These computations may include historical as well as budgeted data. Indicate whether your computations are based upon historical or projected data.

(4) Travel expense.

Attach a schedule illustrating how travel was computed.

(5) Consultant service.

Identify the contemplated consultants. State the amount of service estimated to be required and the consultant's quoted daily or hourly rate.

(6) When the cost of a subcontract is substantial (25 percent of the estimated contract value or $10,000, whichever is less), include details of subcontract costs in the same format as the prime Contractor's costs.

(7) Other direct costs.

Attach a schedule illustrating how other direct costs were computed.

(c) Facilities and special equipment, including tooling.

(1) If special purpose facilities or equipment is being proposed, provide a description of the items, details of the proposed cost including competitive prices, and a justification as to why the Government should furnish the equipment or allow its purchase with contract funds.

(2) If fabrication by the prime Contractor is contemplated, include details of material, labor, and overhead.

(3) Identify Government-owned property in the possession of the offeror or proposed to be used in the performance of the contract, and the Government agency which has cognizance over the property.

(End of provision)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.215-74 Cost proposal instructions.

As prescribed in 1515.407(c), insert a provision substantially as follows in negotiated procurement solicitation documents when cost or pricing data is required in an offeror's proposal and it is necessary to obtain the detailed cost data specified in the provision. While designed to obtain cost data for procurements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) ("Super Fund") program, the provision may be used in other negotiated solicitations.

COST PROPOSAL INSTRUCTIONS (APR 1984)

Offerors are instructed to prepare their cost proposals in sufficient detail to permit thorough and complete evaluation by the Government. Categories of labor to be employed, for example, and the associated number of estimated hours per category, shall be clearly identified. All items of equipment, together with estimated usage hours, shall be set forth. All material costs, travel and per diem costs, analysis costs, and tansportation and disposal costs shall be identified as well. Where proposed rates are not based upon catalog or list prices, the basis for the proposed rates shall be identified. Equipment rates may be proposed on any basis (e.g., hourly, daily, weekly, monthly).

The cost proposal shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet, prepared in accordance with general instructions in FAR 15.804-6 and FAR Table 15-3. Summary data should be placed on SF 1411, and the following format should be followed in preparing the detailed cost proposal. All items which are subcontracted should be clearly identified and should include the name and address of the proposed subcontractor. Written quotations for all subcontracted services must accompany your cost proposal.

(a) Labor.

Labor categories	Estimated hours	Rate per hour (dollars)	Total (dollars)
Labor cost subtotal			

(b) Equipment.

Item description	Estimated usage	Rate (dollars)	Total (dollars)
Equipment cost subtotal			

(c) Travel and subsistence.

(1) Travel.

Number of persons	From	To	Mileage	Cost per trip (dollars)	Total (dollars)

(2) Subsistence.

Number of persons	Number of days	Rate per day (dollars)	Total (dollars)
Travel and per diem subtotal			

(d) Materials and safety equipment.

Item description	Estimated quantity	Unit price (dollars)	Total (dollars)
Material cost subtotal			

(e) Sampling and analytical services.

Type of analysis	Number of analyses	Price per analysis (dollars)	Total (dollars)
Analytical cost subtotal			

(f) Transportation.

Type of material	Size of load	Number of miles	Estimated number of loads	Dollar per mile or dollar per load	Total (dollars)
Transportation cost subtotal					

(g) Disposal.

Type of material	Method of disposal	Estimated quantity	Dollar per gallon or dollar per ton	Total (dollars)
Disposal cost subtotal.				

(h) Other Miscellaneous Services or Charges.

Include in this category any costs associated with mobilization and/or demobilization, handling charges on materials or subcontracts, and any other estimated costs not included in the above categories.

(Please Itemize and Provide Breakdowns Where Applicable)

————————————

————————————

Other Costs Subtotal $ ————

(End of provision)

1552.215-75 [Reserved]

1552.215-76 General financial and organizational information.

As prescribed in 1515.407(a)(3), insert the following provisions:

GENERAL FINANCIAL AND ORGANIZATIONAL INFORMATION (APR 1984)

Offerors or quoters are requested to provide information regarding the following items in sufficient detail to allow a full and complete business evaluation. If the question indicated is not applicable or the answer is none, it should be annotated. If the offeror has previously submitted the information, it should certify the validity of that data currently on file at EPA or update all outdated information on file.

(a) Contractor's Name: ———.

(b) Address (If financial records are maintained at some other location, show the address of the place where the records are kept):

————————————

(c) Telephone Number: ———.

(d) Individual(s) to contact re this proposal:

————————————

(e) Cognizant Government:
Audit Agency: ————————
Address: ————————
Auditor: ————————

(f)(1) Work Distribution for the Last Completed Fiscal Accounting Period:

Sales:

Government cost-reimbursement type prime contracts and subcontracts	$........
Government fixed-price prime contracts and subcontracts	$........
Commercial sales	$........
Total sales	$........

(2) Total sales for first and second fiscal years immediately preceding last completed fiscal year.

Total sales for first preceding fiscal year	$........
Total sales for second preceding fiscal year	$........

(g) Is company a separate entity or division?

————————————

If a division or subsidiary corporation, name parent company:

————————————

(h) Date Company Organized: ———.

(i) Manpower:
Total Employer: ————————
Direct: ————————
Indirect: ————————
Standard Work Week (Hours): ————

(j) Commercial Products: ———.

(k) Attach a current organizational chart of the company.

(l) Description of Contractor's system of estimating and accumulating costs under Government contracts. (Check appropriate blocks.)

	Estimated/ actual cost	Standard cost
Estimating System:		
Job Order		
Process		
Accumulating System:		
Job Order		
Process		

Has your cost estimating system been approved by any Government agency?

Yes —— No ——

If yes, give name and address of agency:

————————————

Has your cost accumulation system been approved by any Government agency?

Yes —— No ——

If yes, give name and address of agency:

————————————

(m) What is your fiscal year period? (Give month-to-month dates):

————————————

What were the indirect cost rates for your last completed fiscal year?

Fiscal year	Indirect cost rate	Basis of allocation
Fringe Benefits		
Overhead		
G&A Expense		
Other		

(n) Have the proposed indirect cost rate(s) been evaluated and accepted by any Government agency?

Yes —— No ——

If yes, name and location of the Government agency:

————————————————

Date of last preaward audit review by a Government agency: ——.

(If the answer is no, data supporting the proposed rates must accompany the cost or price proposal. A breakdown of the items comprising overhead and G&A must be furnished.)

(o) Cost estimating is performed by:
Accounting Department ————
Contracting Department ————
Other ———— ————

(describe)

(p) Has system of control of Government property been approved by a Government agency?

Yes —— No ——

If yes, name and location of the Government agency:

————————————————

(q) Purchasing System: FAR 44.302 requires EPA, where it is the cognizant Government agency, to conduct a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $10 million (annual billings) during the next twelve months. The $10 million sales threshold is comprised of prime contracts, subcontracts under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices or is set by law or regulation). Has your purchasing system been approved by a Government agency?

Yes ———— No ————

If yes, name and location of the Government agency:

————————————————

Period of Approval: ————

If no, do you estimate that your negotiated sales to the Government during the next twelve months will meet the $10 million threshold?

Yes ———— No ————

If you respond yes to the $10 million threshold question, is EPA the cognizant agency for your organization based on the preponderance of Government contract dollars?

Yes ———— No ————

If EPA is not your cognizant Government agency, provide the name and location of the
cognizant agency ————

————————————————

Are your purchasing policies and procedures written?

Yes ———— No ————

(r) Does your firm have an established written incentive competition or bonus plan?

Yes —— No ——

(End of provision)

(Approved by the Office of Management and Budget under control number 2030-0006)

[49 FR 8867, Mar. 8, 1984, as amended at 54 FR 36980, Sept. 6, 1989; 55 FR 13535, Apr. 11, 1990]

1552.216-70 Award fee.

As prescribed in 1516.405, insert the following contract clause in cost-plus-award-fee contracts.

AWARD FEE (APR 1984)

The amount of award fee the Contractor earns, if any, is based on a subjective evaluation by the Government of the quality of the Contractor's performance in accordance with the award fee plan. The Government will determine the amount of award fee every ——— months beginning ———. The fee Determination Official (FDO) will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the Contractor and is not subject to the "Disputes" clause. The Government may unilaterally change the award fee plan at any time and will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period. The Contractor may submit a voucher for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods.

(End of clause)

1552.216-71 Date of incurrence of cost.

At prescribed in 1516.307, insert the following contract clause in cost-reimbursement contracts when an anticipatory cost letter has been issued on the project. The beginning dates and the not-to-exceed amount to be inserted in the clause should be those in the anticipatory cost letter.

DATE OF INCURRENCE OF COST (APR 1984)

The Contractor is entitled to reimbursement for allowable, allocable costs incurred during the period of ———— to the award date of this contract in an amount not to exceed
$ ————————————————
All terms and conditions of this contract are in effect from

————————————————

(End of clause)

1552.216-72 Ordering—by designated ordering officers.

As prescribed in 1516.505(a), insert the following in indefinite delivery/indefinite quantity contracts.

ORDERING—BY DESIGNATED ORDERING OFFICERS (APR 1984)

(a) The Government will order any supplies and services to be furnished under this contract by issuing delivery orders on Optional Form 347, or any agency prescribed form, from —— through ——. In addition to the Contracting Officer, the following individuals are authorized ordering officers.

(b) A Standard Form 30 will be the method of amending delivery orders.

(c) The Contractor shall acknowledge receipt of each order and shall prepare and forward to the Ordering Officer within ten (10) calendar days the proposed staffing plan for accomplishing the assigned task within the period specified.

(d) If the Contractor considers the estimated labor hours or specified work completion date to be unreasonable, he/she shall promptly notify the Ordering Officer and Contracting Officer in writing within 10 calendar days, stating why the estimated labor hours or specified completion date is considered unreasonable.

(e) Each delivery order will have a ceiling price, which the Contractor may not exceed. When the Contractor has reason to believe that the labor payment and support costs for the order, which will accrue in the next thirty (30) days, will bring total cost to over 85 percent of the ceiling price specified in the order, the Contractor shall notify the Ordering Officer.

(f) Paragraphs (c), (d), and (e) of this clause apply only when services are being ordered.

(End of clause)

1552.216-73 Fixed rates for services—indefinite delivery/indefinite quantity contract.

As prescribed in 1516.505(b), insert the following clause to specify fixed rates for services in indefinite delivery/indefinite quantity contracts. When the contract contains options, the clause should be modified to reflect the information and data for the base period and any option periods.

FIXED RATES FOR SERVICES—INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT (APR 1984)

The following fixed rates shall apply for payment purposes for the duration of the contact.

Personnel classification	Skill level	Estimated direct labor hours	Fixed hourly rate	Total

The rate, or rates, set forth above cover all expenses, including report preparation, salaries, overhead, general and administrative expenses, and profit.

The Contractor shall voucher for only the time of the personnel whose services are applied directly to the work called for in individual Delivery Orders and accepted by the EPA Project Officer. The Government shall pay the Contractor for the life of a delivery order at rates in effect when the delivery order was issued, even if performance under the delivery order crosses into another period. The Contractor shall maintain time and labor distribution records for all employees who work under the contract. These records must document time worked and work performed by each individual on all Delivery Orders.

(End of clause)

1552.217-70 Evaluation of contract options.

As prescribed in 1517.208(a), insert the following solicitation provision in Requests for Proposals when the solicitation contains options.

EVALUATION OF CONTRACT OPTIONS (APR 1984)

For award purposes, in addition to an offeror's response to the basic requirement, the Government will evaluate its response to all options, both technical and cost. Evaluation of options will not obligate the Government to exercise the options. For this solicitation the options are as specified in Section H.

(End of provision)

1552.217-71 Option to extend the term of the contract—cost-type contract.

As prescribed in 1517.208(b), insert this contract clause in cost-reimbursement type term form contracts when applicable. If only one option period is used, enter "NA" in the proper places of the clause. If more than two option periods apply, the clause may be modified accordingly.

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-TYPE CONTRACT (APR 1984)

The Government has the option to extend the term of this contract for —— additional period(s). If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option. The Government's estimated level of effort is —— direct labor hours for the first option period and —— for the second. Use of an option will result in the following contract modifications:

(a) The "Period of Performance" clause will be amended to cover a base period from —— to —— and option periods from —— to —— and —— to ——.

(b) Paragraph (a) of the "Level of Effort" clause will be amended to reflect a new and separate level of effort of —— for the first option period and a new and separate level of effort of —— for the second option period.

(c) The "Estimated Cost and Fixed Fee" clause will be amended to reflect increased estimated costs and fixed fee for each option period as follows:

	Option 1	Option 2
Estimated cost		
Fixed fee		
Total		

(d) If the contract contains "not to exceed amounts" for elements of other direct costs (ODC), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2

(End of clause)

1552.217-72 Option to extend the term of the contract—cost-plus-award-fee contract.

As prescribed in 1517.208(c), insert this contract clause in cost-plus-award-fee term contracts when applicable. If only one option period is used, enter "NA" in the proper places of the clause. If more than two option periods apply, modify the clause accordingly.

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-PLUS-AWARD-FEE CONTRACT (APR 1984)

(a) The Government has the option to extend the term of this contract for —— additional periods. If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option. The Government's estimated level of effort is —— direct labor hours for the first option period and —— for the second. Use of an option will result in the following contract modifications:

(b) The "Period of Performance" clause will be amended to cover a base period from —— to —— and option periods from —— to —— and —— to ——.

(c) Paragraph (a) of the "Level of Effort" clause will be amended to reflect a new and separate level of effort of —— for the first option period and a new and separate level of effort of —— for the second option period.

(d) The "Estimated Cost Base Fee and Award Fee" clause will be amended to reflect increased estimated costs and base fee and award fee pool for each option period as follows:

	Option 1	Option 2
Estimated cost		
Base fee		
Award fee pool		
Total		

(e) If this contract contains "not to exceed amounts" for elements of other direct costs (ODC), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.217-73 Option for increased quantity—cost-type contract.

As prescribed in 1517.208(d), insert this contract clause in cost-reimbursement type term form contracts when applicable. If only one option period is used, enter "NA" in the proper places of the clause. If more than two option periods apply, modify the clause accordingly.

Option for Increased Quantity—Cost-Type Contract (Apr 1984)

By issuing a contract modification, the Government may increase the estimated level of effort by —— direct labor hours during the base period, —— during the first option period, and —— during the second option period. The Government may issue a maximum of —— orders to increase the level of effort in blocks of —— hours during any given period. The estimated cost and fixed fee of each block of hours is as follows:

	Base period	Option 1	Option 2
Estimated cost			
Fixed fee			
Total			

When these options are exercised, paragraph (a) of the "Level of Effort" clause and the "Estimated Cost and Fixed Fee" clause will be modified accordingly.

(End of clause)

1552.217-74 Option for increased quantity—cost-plus-award-fee contract.

As prescribed in 1517.208(e), insert this contract clause in cost-plus-award-fee term contracts when applicable. If only one option period is used, enter "NA" in the proper places of the clause. If more than two option periods apply, the clause may be modified accordingly.

Option for Increased Quantity—Cost-Plus-Award-Fee Contract (Apr 1984)

By issuing a contract modification, the Government may increase the estimated level of effort by —— direct labor hours during the base period, —— during the first option period, and —— during the second option period. The Government may issue a maximum of —— orders to increase the level of effort in blocks of —— hours during any given period. The estimated cost, base fee, and award fee pool of each block of hours is as follows:

	Base period	Option 1	Option 2
Estimated cost			
Base fee			
Award fee pool			
Total			

When these options are exercised, paragraph (a) of the "Level of Effort" clause and the "Estimated Cost, Base Fee, and Award Fee" clause will be modified accordingly.

(End of clause)

1552.217-75 Option to extend the effective period of the contract—time and materials or labor hour contract.

As prescribed in 1517.208(f), insert this clause in time and materials or labor hour type contracts when applicable. This clause will be modified to reflect the actual number of option periods for the acquisition. If only one option period is used, modify (c) accordingly.

Option to Extend the Effective Period of the Contract—Time and Materials or Labor Hour Contract (Apr 1984)

(a) The Government has the option to extend the effective period of this contract for —— additional period(s). If more than sixty (60) days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) If the option(s) are exercised, the "Ceiling Price" clause will be modified to reflect a new and separate ceiling price of $—— for the first option period and a new and seperate ceiling price of $—— for the second option period.

(c) The "Effective Period of the Contract" clause will be modified to cover a base period from —— to —— and option periods from —— to —— and —— to ——.

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.217-76 Option to extend the effective period of the contract—indefinite delivery/indefinite quantity contract.

As prescribed in 1517.208(g), the following is used in indefinite delivery/indefinite quantity type contracts with options to extend the effective period of the contract. The clause may be adjusted depending upon the number of options. If only one option period is used, modify (b) and (c) accordingly.

OPTION TO EXTEND THE EFFECTIVE PERIOD OF THE CONTRACT—INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT

(a) The Government has the option to extend the effective period of this contract for —— additional period(s). If more than sixty (60) days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) If the options are exercised, the "Minimum and Maximum Contract Amount" clause will be modified to reflect new and separate minimums of —— for the first option period and —— for the second option period, and new and separate maximums of —— for the first option period and —— for the second option period.

(c) The "Effective Period of the Contract" clause will be modified to cover a base period from —— to —— and option periods from —— to —— and —— to ——.

(End of clause)

1552.223-70 Protection of human subjects.

As prescribed in 1523.303-70, insert the following contract clause when the contract involves human test subjects.

PROTECTION OF HUMAN SUBJECTS (APR 1984)

(a) The Contractor shall protect the rights and welfare of human subjects in accordance with the procedures specified in its current Institutional Assurance on file with the Agency. The Contractor shall certify at least annually that an appropriate institutional committee has reviewed and approved the procedures which involve human subjects in accordance with the appliable Institutional Assurance accepted by the Agency.

(b) The Contractor shall bear full responsibility for the proper and safe performance of all work and services involving the use of human subjects under this contract.

(End of clause)

1552.224-70 Social security numbers of consultants and certain sole proprietors and Privacy Act statement.

As prescribed in 1524.104, insert the following provision in all solicitations.

SOCIAL SECURITY NUMBERS OF CONSULTANTS AND CERTAIN SOLE PROPRIETORS AND PRIVACY ACT STATEMENT (APR 1984)

(a) Section 6041 of title 26 of the U.S. Code requires EPA to file Internal Revenue Service (IRS) Form 1099 with respect to individuals who receive payments from EPA under purchase orders or contracts. Section 6109 of title 26 of the U.S. Code authorizes collection by EPA of the social security numbers of such individuals for the purpose of filing IRS Form 1099. Social security numbers obtained for this purpose will be used by EPA for the sole purpose of filing IRS Form 1099 in compliance with section 6041 of title 26 of the U.S. Code.

(b) If the offeror or quoter is an individual, consultant, or sole proprietor and has no Employer Identification Number, insert the offeror's or quoter's social security number on the following line.

(End of provision)

1552.227-70 Notification of limited-rights data and restricted computer software.

As prescribed in 1527.7005(a), insert the following provision in solicitations:

NOTIFICATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE (APR 1984)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known requirements for data (as defined in the EPA Acquisition Regulation at 1527.7001). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause (EPA Acquisition Regulation, 1552.227-74), if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause (EPA Acquisition Regulation, 1552.227-71) that is to be included in this contract. Under this clause a Contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. This clause also authorized the Government to require delivery of limited-rights data or restricted computer software that has been withheld or would otherwise be withholdable. In addition, this clause provides the Government with the right to inspect such data at the Contractor's facility.

(b) The offeror's response to this solicitation shall, to the extent feasible, either state that none of the data qualifies as limited-rights data or restricted computer software, or identify which of the data qualifies as limited-rights data or restricted computer software. Any identification of limited-rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(c) If this acquisition is solely for existing computer software and/or data bases, any resulting contract must contain provisions which cover the Government's right to use the software and, at the least, it should normally contain the rights set forth at EPA Acquisition Regulation 1527.7003(b)(5). Consult EPA Acquisition Regulation 1527.7003(d)(2) for further guidance. EPA will consider for incorporation in the contract a vendor's own license or other conditions provided they are not inconsistent with 1527.7003(b)(5) of 1527.7003(d)(2).

(End of provision)

(Approved by the Office of Management and Budget under control number 2030-0012)

[49 FR 29228, July 19, 1984 and 51 FR 25368, July 14, 1986]

1552.227-71 Rights in data—general.

As prescribed in 1527.7005(b), insert the following clause in solicitations and contracts:

RIGHTS IN DATA—GENERAL (APR 1984)

(a) *Definitions. Computer software*, as used in this clause, means computer programs, computer data bases, and documentation thereof.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or financial, business, and management information required for contract administration purposes.

Form, fit, and function data, as used in this clause, means data describing, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

Limited rights, as used in this clause, means the rights of the Government in limited-rights data as set forth in the Limited Rights Notice of paragraph (g)(2) of this clause.

Limited-rights data, as used in this clause, means data that embodies trade secrets or is commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processes developed at private expense, including minor modifications thereof.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret, or is commercial or financial data which is confidential or privileged, or is published copyrighted computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g)(3) of this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

Unlimited rights, as used in this clause, means the right of the Government, without additional cost to the Government, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights*. (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and/or training material, and

(iv) All other data delivered under this contract unless provided otherwise for limited-rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights or restricted rights notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause.

(c)(1) *Data first produced in the performance of this contract.* Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish claim to copyright subsisting in scientific and technical articles based on or derived from data first produced in the performance of this contract and published in academic, technical, or professional journals. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract in accordance with EPA Acquisition Regulation 1527,7003(b)(6). When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgment of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) *Data not first produced in the performance of this contract.* The Contract or shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data is computer software the Government shall acquire a copyright license as set forth in paragraph (g)(3) of this clause or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, subject, however, to the clause at 1552.237-70, Contract Publication Review Procedure and the copyright provisions of paragraphs (c)(1) and (c)(2) of this clause.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, the Contracting Officer may either return the data to the Contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The Contracting Officer makes written inquiry to the Contractor concerning the propriety of the markings, providing the Contractor 30 days to respond; and

(ii) The Contractor fails to respond within the 30 day period (or a longer time approved by the Contracting Officer for good cause shown), or the Contractor's response fails to substantiate the propriety of the markings.

(2) The Contracting Officer shall consider the Contractor's response, if any, and determine whether the markings shall be cancelled or ignored. The Contracting Officer shall furnish written notice to the Contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The Environmental Protection Agency reserves the right to modify the above procedures when implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (g) of this clause, or without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the

Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in paragraphs (b)(1)(i), (ii), and (iii) of this clause is specified to be delivered under this contract and qualifies as either limited-rights data or restricted computer software the Contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited-rights data that is formatted as a computer data base for delivery to the Government is to be treated as limited-rights data and not restricted computer software.

(2) Notwithstanding paragraph (g)(1) of this clause, this contract may identify and specify the delivery of limited-rights data, or the Contracting Officer may, at any time during contract performance and for a period of 3 years after acceptance of all items to be delivered under this contract, require by written request the delivery of limited-rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE (APR 1984)

(a) This data is submitted with limited rights under Government contract No. —— (subcontract ——, if appropriate). It may be reproduced and used by the Government with the express limitation that it will not, without permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose this data outside the Government for the following purposes, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use by support service Contractors.

(2) Evaluation by nongovernment evaluators.

(3) Use by other Contractors participating in the Government's program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(4) Emergency repair or overhaul work.

(5) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such government.

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

(3)(i) Notwithstanding paragraph (g)(1) of this clause, this contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may, at any time during contract performance and for a period of 3 years after acceptance of all items to be delivered under this contract, require by written request the delivery of restricted computer software that has been withheld. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE (APR 1984)

(a) This computer software is submitted with restricted rights under Government contract No. —— (and subcontract ——, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined or adapted portions of the derivative software incorporating re-

stricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support Contractors or their subcontractors in accordance with paragraphs (b) (1) through (4) of this notice, provided the Government makes such disclosure subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part."

(End of notice)

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE (SHORT FORM) (APR 1984)

Use, reproduction, or disclosure is subject to restrictions set forth in contract No. —— (and subcontract ——, if appropriate) with —— (name of Contractor and subcontractor).

(End of notice)

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or other Federal Government employee may, at all reasonable times up to 3 years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld under paragraph (g)(1) of this clause, or any data specifically used in the performance of this contract, for the purpose of evaluating work performance or verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data.

(End of clause)

ALTERNATE I (Apr 1984)

As prescribed in 1527.7005(b)(2), substitute the following definition for "Limited Rights Data" in paragraph (a) of the clause:

"Limited-rights data," as used in this clause, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

(Approved by the Office of Management and Budget under control number 2030-0012)

[49 FR 29228, July 19, 1984 and 51 FR 25368, July 14, 1986]

1552.227-72 Rights in data—special works.

As prescribed in 1527.7005(c), insert the following clause in solicitations and contracts:

RIGHTS IN DATA—SPECIAL WORKS (APR 1984)

(a) *Definitions.*

Data, as used in this clause, means recorded information regardless of form or medium on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analyses or financial, business, and management information required for contract administration purposes.

Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to establish claim to copyright subsist-

ing in data first produced in the performance of this contract.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.* (i) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without the prior written permission of the Contracting Officer. When claim to copyright is made the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 to such data when delivered to the Government, and include that notice as well as acknowledgment of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(ii) If the Government desires to obtain ownership of copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of a claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor release, reproduce, distribute or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* (1) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

[49 FR 29230, July 19, 1984 and 51 FR 25368, July 14, 1986]

1552.227-73 Rights in data—existing works.

As prescribed in 1527.7005(d), insert the following clause in solicitations and contracts:

RIGHTS IN DATA—EXISTING WORKS (APR 1984)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract, or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction, and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

[49 FR 29231, July 19, 1984 and 51 FR 25368, July 14, 1986]

1552.227-74 Additional data requirements.

As prescribed in 1527.7005(e), insert the following clause in solicitations and contracts (except those using small purchase procedures):

ADDITIONAL DATA REQUIREMENTS (APR 1984)

(a) In addition to the data (as defined in the rights in data clause included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The rights in data clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data which is specifically identified in this contract as not subject to this clause.

(c) When data is to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

(End of clause)

(Approved by the Office of Management and Budget under control number 2030-0012)

[49 FR 29231, July 19, 1984 and 51 FR 25368, July 14, 1986]

1552.227-75 Rights in data developed under Small Business Innovative Research (SBIR) contracts.

As prescribed in 1527.7005(h), insert the following clause in Small Business Innovative Research solicitations and contracts:

RIGHTS IN DATA DEVELOPED UNDER SMALL BUSINESS INNOVATIVE RESEARCH (SBIR) CONTRACTS (APR 1984)

All rights to data, including computer software, developed under the terms of this contract shall remain with the Contractor, except that the Government shall have the limited right to use such data, including computer software, for Government purposes and shall not have the right to release such data or software outside the Government without permission of the Contractor for a period of two years from completion of the project under which the data or software was generated. However, effective at the conclusion of the two-year period, the Government shall retain a royalty free license for Government use of any data or software delivered under this contract, even if it is patented or copyrighted.

(End of clause)

[49 FR 29231, July 19, 1984 and 51 FR 25368, July 14, 1986]

1552.228-70 Insurance—liability to third persons—commercial organizations.

As prescribed in 1528.311-70, insert the following contract clause in contracts with commercial organizations when routine (nonemergency) removal or remedial action is being undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act.

INSURANCE—LIABILITY TO THIRD PERSONS—COMMERCIAL ORGANIZATIONS (APR 1984)

(a) The Contractor shall procure and maintain such insurance as is required by law or regulation, including that required by FAR part 28, in effect as of the date of execution of this contract, and any such insurance as the Contracting Officer may, from time to time, require with respect to performance of this contract.

(b) At a minimum, the Contractor shall procure and maintain the following types of insurance:

(1) Workmen's compensation and occupational disease insurance in amounts to satisfy State law;

(2) Employer's liability insurance in the minimum amount of $100,000 per occurrence;

(3) Comprehensive general liability insurance for bodily injury, death or loss of or damage to property of third persons in the minumum amount of $1,000,000 per occurrence;

(4) When vessels are used in the performance of the contract, vessel collision liability and protection and indemnity liability insurance in such amounts as the Contracting Officer may require or approve: provided, that the Contractor may, with the approval of the contracting Officer, maintain a self-insurance program. All insurance required pursuant to the provisions of this paragraph shall be in such form and for such periods of time as the Contracting Officer may, from time to time, require or approve and with insurers approved by the Contracting Officer.

(c) The Contractor agrees, to the extent and in the manner required by the contracting Officer, to submit for the approval of the contracting Officer any other insurance maintained by the contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(d) The Contractor shall be reimbursed, for the portion allocable to this contract, the reasonable cost of insurance (including reserves for self-insurance) as required or approved pursuant to the provisions of this contract clause.

(e) The Government will hold harmless and indemnify the contractor against claims (including expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury, or loss of or damage to property arising out of performance of this contract, to the extent that such a claim is not compensated by insurance or otherwise. Any such claim within deductible amounts of the Contractor's insurance will not be covered under this contract clause. Reimbursement for such liabilities to third persons will not cover liabilities for which the contractor has failed to insure as required or to maintain insurance as approved by the Contracting Officer. The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) that result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The Government may discharge its liability under this contract clause by making payments directly to the Contractor or directly to parties to whom the Contractor may be liable.

(g) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract the same provisions in this clause whereby the Contractor shall indemnify the subcontractor. Such a subcontract shall provide the same rights and duties and the same provisions for notice, furnishings of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. Similar indemnification may be provided for subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this contract clause shall provide for prompt notification to the Contractor which is covered by this contract clause, and shall entitle the Government, at its election, to control or assist in the settlement or defense of any such claim or action. The Government will indemnify the Contractor with respect to his obligations to subcontractors under such subcontract provisions. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractors may be liable.

(h) If insurance coverage required or approved by the Contracting Officer is reduced without the Contracting Officer's approval, the liability of the Government under this contract clause will not be increased by reason of such reduction.

(i) The Contractor shall:

(1) Promptly notify the Contracting Officer of any claim or action against the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this contract clause;

(2) Furnish evidence or proof of any claim covered by this contract clause in the manner and form required by the Government; and

(3) Immediately furnish the Government copies of all pertinent papers received by the Contractor. The Government may direct, control, or assist the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(j) Reimbursement for any liabilities under this contract clause will not exceed appropriations available at the time such liabilities are represented by final judgments or by settlements approved in writing by the Government. This agreement to reimburse the Contractor for certain liabilities will not be interpreted as implying that Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.228-71 Insurance—liability to third persons—state or local governments.

As prescribed in 1528.311-70, insert the following contract clause in contracts with State or local Governments when routine (nonemergency) removal or remedial action is being undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act.

Insurance—Liability to Third Persons—State or Local Governments (Apr 1984)

(a) The Contractor shall procure and maintain such insurance as the Contracting Officer may, from time to time, require with respect to performance of this contract.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer, to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of this contract (including any self-insurance) and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed, for the portion allocable to this contract, the reasonable cost of insurance (including reserves for self-insurance) as required or approved pursuant to the provisions of this contract clause.

(d) The Federal Government will hold harmless and indemnify the Contractor against claims (including expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury, or loss of or damage to property arising out of performance of this contract, to the extent that such a claim is not compensated by insurance or otherwise. Any such claim within deductible amounts of the Contractor's insurance will not be covered under this contract clause. Reimbursement for such liabilities to third persons will not cover liabilities for which the Contractor has failed to insure as required or to maintain insurance as approved by the Contracting Officer. The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) that result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(e) The Federal Government may discharge its liability under this contract clause by making payments directly to the Contractor or directly to parties to whom the Contractor may be liable.

(f) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract the same provisions in this contract clause whereby the Contractor shall indemnify the subcontractor. Such a subcontract shall provide the same rights and duties and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this contract clause. Similar indemnification may be provided for subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this contract clause shall provide for prompt notification to the Contracting Officer of any claim or action against the subcontractor which is covered by this contract clause, and shall entitle the Government, at its election, to control or assist in the settlement or defense of any such claim or action. The Federal Government will indemnify the Contractor with respect to its obligations to subcontractors under such subcontract provisions. The Federal Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractors may be liable.

(g) If insurance coverage required or approved by the Contracting Officer is reduced without the Contracting Officer's approval, the liability of the Government under this contract clause will not be increased by reason of such reduction.

(h) The Contractor shall: (1) Promptly notify the Contracting Officer of any claim or action against the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this contract clause;

(2) Furnish evidence or proof of any claim covered by this contract clause in the manner and form required by the Federal Government; and

(3) Immediately furnish the Federal Government copies of all pertinent papers received by the Contractor. The Government may direct, control, or assist the settlement or defense of any such claim or action. The Contractor shall comply with the Federal Government's directions, and execute any authorizations required in regard to such settlement or defense.

(i) Reimbursement for any liabilities under this contract clause will not exceed appropriations available at the time such liabilities are represented by final judgments or by settlements approved in writing by the Federal Government. This agreement to reimburse the Contractor for certain liabilities will not be interpreted as implying that Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(End of clause)

1552.228-72 Insurance—liability to third persons—commercial organizations (emergency).

As prescribed in 1528.311-70, insert the following contract clause in contracts with commercial organizations when emergency response to hazardous substance releases or potential releases are being undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act.

INSURANCE—LIABILITY TO THIRD PERSONS—COMMERCIAL ORGANIZATIONS (EMERGENCY) (APR 1984)

(a) The Contractor shall procure and maintain such insurance as is required by law or regulation, including that required by FAR part 28 in effect as of the date of execution of this contract, and any such insurance as the Contracting Officer may, from time to time, require with respect to performance of this contract.

(b) At a minimum, the Contractor shall procure and maintain the following types of insurance:

(1) Workmen's compensation and occupational disease insurance in amounts to satisfy state law;

(2) Employer's liability insurance;

(3) Comprehensive general liability (bodily injury) insurance;

(4) Comprehensive automobile liability (bodily injury and property damage) insurance;

(5) When aircraft are used in the performance of the contract, aircraft public and passenger liability insurance; and

(6) When vessels are used in the performance of the contract, vessel collision liability and protection and indemnity liability insurance: Provided, that the Contractor may maintain a self-insurance program.

(c) The Contractor shall be reimbursed, for the portion allocable to this contract, the reasonable cost of insurance maintained by the Contractor, including reserves for self-insurance.

(d) The Government will hold harmless and indemnify the Contractor against claims (including expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury, or loss of or damage to property arising out of performance of this contract, to the extent that such a claim is not compensated by insurance or otherwise. Any such claim within deductible amounts of the Contractor's insurance will not be covered under this contract clause. The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) that result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(e) The Government may discharge its liability under this contract clause by making payments directly to the Contractor or directly to parties to whom the Contractor may be liable.

(f) The Contractor may include in any subcontract under this contract the same provisions in this contract clause whereby the Contractor shall indemnify the subcontractor. Such a subcontract shall provide the same rights and duties and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this contract clause. Similar indemnification may be provided for subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this contract clause shall provide for prompt notification to the Contracting Officer of any claim or action against the subcontractor which is covered by this contract clause, and shall entitle the Government, at its election, to control or assist in the settlement or defense of any such claim or action. The Government will idemnify the Contractor with respect to his obligations to subcontractors under such subcontract provisions. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractors may be liable.

(g) If insurance maintained by the Contractor is reduced, the liability of the Government under this contract clause will not be increased by reason of such reduction.

(h) The Contractor shall: (1) Promptly notify the Contracting Officer of any claim or action against the Contractor or any subcontractor which reasonably may be expected to involve indemification under this contract clause;

(2) Furnish evidence or proof of any claim covered by this contract clause in the manner and form required by the Government; and

(3) Immediately furnish the Government copies of all pertinent papers received by the Contractor. The Government may direct, control, or assist the settlement or defense of any such claim or action. The

Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(i) Reimbursement for any liabilities under this contract clause will not exceed appropriations available at the time such liabilities are represented by final judgments or by settlements approved in writing by the Government. This agreement to reimburse the Contractor for certain liabilities shall not be interpreted as implying that Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.228-73 Insurance—Liability to third persons—state or local governments (emergency).

As prescribed in 1528.311-70, insert the following contract clause in contracts with State or local governments when emergency response to hazardous substance releases or potential releases are being undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act.

INSURANCE—LIABILITY TO THIRD PERSONS—STATE OR LOCAL GOVERNMENTS (EMERGENCY) (APR 1984)

(a) The Contractor shall be reimbursed, for the portion allocable to this contract, the reasonable cost of insurance maintained by the Contractor, including reserves for self-insurance.

(b) The Federal Government will hold harmless and indemnify the Contractor against claims (including expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury, or loss of or damage to property arising out of performance of this contract, to the extent that such a claim is not compensated by insurance or otherwise. Any such claim within deductible amounts of the Contractor's insurance will not be covered under this contract clause. The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) that result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(c) The Federal Government may discharge its liability under this contract clause by making payments directly to the Contractor or directly to parties to whom the Contractor may be liable.

(d) The Contractor may include in any subcontract under this contract the same provisions in this contract clause whereby the Contractor shall indemnify the subcontractor. Such a subcontract shall provide the same rights and duties and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this contract clause. Similar indemnification may be provided for subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this contract clause shall provide for prompt notification to the Contracting Officer of any claim or action against the subcontractor which is covered by this contract clause, and shall entitle the Government, at its election, to control or assist in the settlement or defense of any such claim or action. The Federal Government will indemnify the Contractor with respect to its obligations to subcontractors under such subcontract provisions. The Federal Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractors may be liable.

(e) If insurance maintained by the Contractor is reduced, the liability of the Federal Government under this contract clause shall not be increased by reason of such reduction.

(f) The contractor shall: (1) Promptly notify the Contracting Officer of any claim or action against the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this contract clause;

(2) Furnish evidence or proof of any claim covered by this contract clause in the manner and form required by the Federal Government; and

(3) Immediately furnish the Federal Government copies of all pertinent papers received by the Contractor. The Government may direct, control, or assist the settlement or defense of any such claim or action. The Contractor shall comply with the Federal Government's directions, and execute any authorizations required in regard to such settlement or defense.

(g) Reimbursement for any liabilities under this contract clause will not exceed appropriations available at the time such liabilities are represented by final judgments or by settlements approved in writing by the

Federal Government. This agreement to reimburse the Contractor for certain liabilities will not be interpreted as implying that Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(End of clause)

1552.229-70 State and local taxes.

As prescribed in 1529.401-70, insert the following clause:

STATE AND LOCAL TAXES (NOV 1989)

In accordance with FAR 29.303 and FAR 31.205-41, the Contractor or any subcontractor under this contract shall not be reimbursed for payment of any State and local taxes for which an exemption is available. The Contractor is responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available. The Contractor shall include this clause, suitably modified to identify the parties, in all subcontracts at any tier. The Contractor shall notify the Contracting Officer if problems arise in obtaining a State and local tax exemption. The contractor may seek a waiver by the Contracting Officer from this requirement if the administrative burden of seeking an exemption appears to outweigh the potential savings to the Government.

(End of clause)

[54 FR 49998, Dec. 4, 1989]

1552.232-70 Submission of invoices.

As prescribed in 1532.908, insert the following clause:

SUBMISSION OF INVOICES (OCT 1989)

In order to be considered properly submitted, an invoice or request for contract financing payment must meet the following requirements in addition to those of FAR 32.905:

(a) Unless otherwise specified in the contract, an invoice or request for contract financing payment shall be submitted as an original and four copies. The contractor shall submit the invoice to the following offices/individuals designated in the contract: original and one copy to the accounting operations office; two copies to the project officer (the project officer may direct one of these copies to a separate address); and one copy to the Contracting Officer.

(b)(1) If this is a cost-reimbursement contract, the contractor shall prepare the invoice or request for contract financing payment in accordance with EPA Form 1900-34, "Guide for the Preparation of Contractor's Claim for Reimbursement of Costs and Fees Under Cost Reimbursement Type Contracts" or EPA Form 1900-34A, "Guide for the Preparation of Contractor's Claims for Reimbursement of Costs and Fees Under Cost-Plus-Award-Fee (CPAF) Type Contracts." If the contract is a cost-reimbursement term-form contract under which contract work is authorized by individual work assignments, the invoice or request for contract financing payment shall include a summary of amounts claimed against each work assignment.

(2) The invoice for a cost-reimbursement contract shall include current and cumulative charges by major cost element such as direct labor, overhead, travel, equipment, and other direct costs. The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract.

(c)(1) If this is an indefinite delivery/indefinite quantity contract, the invoice or request for contract financing payment shall include a summary of amounts claimed against each delivery order, unless otherwise specified.

(2) The invoice for an indefinite delivery/indefinite quantity contract shall indicate charges by major categories such as labor, travel, equipment, subcontracts, and consultants. The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract.

(d) Invoices must clearly indicate the period of performance for which payment is requested and include EPA accounting information necessary to process payments. Separate invoices are required for charges applicable to the basic contract and for each option period. If contract work is ordered through individual work assignments or delivery orders, invoices must show current and cumulative charges by work assignment or delivery order number and EPA accounting information (separate invoices shall be submitted for each delivery order). When contracts, work assignments or delivery orders contain multiple lines of accounting data, charges that cannot be assigned to a single line of accounting information should be allocated based on the percentage of total dollars, unless otherwise specified. Required accounting information includes the Document Control Number (DCN) and the account number shown in block 14 of the SF 26, block 21, of the SF 33, block 12 of the SF 30, or on the individual work assignment or delivery order.

(e) When the contractor invoices on a monthly basis, the period covered by requests for contract financing payments must be the same as the period for monthly progress reports required under this contract. If, in accordance with FAR 52.216-7, the contractor submits requests for contract financing payments more frequently than monthly, one payment request each month must have the same ending period of performance as the monthly progress report. Where cumulative amounts on the monthly progress report differ from the aggregate amounts contained in the request(s) for contract financing payments covering the same period, the contractor must provide a reconciliation of the difference as part of the payment request.

ALTERNATE I (SEP 1990)

As prescribed in 1532.908, substitute the following paragraph for (d) in the clause:

(d) Invoices must clearly indicate the period of performance for which payment is requested and include EPA accounting information necessary to process payments. Separate invoices are required for charges applicable to the basic contract and each option period. If contract work is ordered through individual work assignments or delivery orders, invoices must show current and cumulative charges by work assignment or delivery order number and EPA accounting information. When contracts, work assignments or delivery orders contain multiple lines of accounting data, charges that cannot be assigned to a single line of accounting information should be allocated based on the percentage of total dollars, unless otherwise specified. Required accounting information includes the account number shown in block 14 of the SF 26, block 21 of the SF 33, block 12 of the SF 30, or on the individual work assignment or delivery order (separate invoices shall be submitted for each delivery order).

ALTERNATE II (SEP 1990)

As prescribed in 1532.908, substitute the following paragraph for (d) in the clause:

(d) Invoices must clearly indicate the period of performance for which payment is requested. Separate invoices are required for charges applicable to the basic contract and each option period. If contract work is ordered through individual work assignments or delivery orders, invoices must show current and cumulative charges by work assignment or delivery order number (separate invoices shall be submitted for each delivery order).

(End of clause)

[54 FR 9215, Mar. 6, 1989, as amended at 54 FR 40876, Oct. 4, 1989; 55 FR 38807, Sept. 21, 1990; 55 FR 39622, Sept. 28, 1990]

1552.232-71—1552.232-72 [Reserved]

1552.232-73 Payments—fixed-rate services contract.

As prescribed in 1532.111, insert the following in indefinite delivery/indefinite quantity contracts with fixed services rates.

PAYMENTS—FIXED-RATE SERVICES CONTRACT (APR 1984)

The Government shall pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) *Hourly rate.* (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expenses, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the paying office. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job, timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract and subject to the terms of (e) below, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) below.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the "Disputes" clause of this contract. If the Schedule provides rates for overtime the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials, other direct costs, and subcontracts.* (1) The allowability of direct materials and other direct costs shall be determined by the Contracting Officer in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Reasonable and allocable material handling costs or indirect costs may be included in the charge for material or other direct costs to the extent they are clearly excluded from the hourly rate. Material handling and/or indirect cost rates are specified in the "Indirect Costs" clause. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with subpart 31.2 of the FAR. The Contractor shall be reimbursed for items and services purchased directly for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials or other direct costs, as used in this clause, are those items which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

(2) Subcontracted effort may be included in the fixed hourly rates discussed in paragraph (a)(1) of this clause and will be reimbursed as discussed in that paragraph. Otherwise, the cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause provided that the costs are consistent with paragraph (3) of this clause. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the contract under paragraph (1) of this clause; however, this requirement shall not apply to a Contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(3) To the extent able, the Contractor shall (i) obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(4) If the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (b)(1) above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government; provided, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

(c) Contracting Officer notification. For contract administration purposes, the Contractor shall notify the Contracting Officer in writing when the total value of all delivery orders issued exceeds 85 percent of the maximum price specified in the schedule.

(d) Maximum amount. The Government shall not be obligated to pay the Contractor any amount in excess of the maximum amount in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the maximum amount set forth in the Schedule, unless or until the Contracting Officer shall have notified the Contractor in writing that the maximum amount has been increased and shall have specified in the notice a revised maximum that shall constitute the maximum amount for performance under this contract. When and to the extent that the maximum amount set forth in the Schedule has been increased, any hours expended, and material or other direct costs incurred by the Contractor in excess of the maximum amount before the increase, shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the maximum amount.

(e) Audit. At any time before final payment under this contract, the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) below), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event, later than one year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) Assignment. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(g) Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(End of clause)

1552.235-70 Screening business information for claims of confidentiality.

As prescribed in 1535.007-70(a), insert the following contract clause in all types of contracts when the Contracting Officer has determined that during performance of this contract, the Contractor may be required to collect information to perform the work required under this contract. Some of the information may consist of trade secrets or commercial or financial information that would be considered as proprietary or confidential by the business that has the right to the information. The following clause enables EPA to resolve any claims of confidentiality concerning the information that the Contractor will furnish under a contract. The clause entitled "Treatment of Confidential Business Information" shall also be included in the contract:

SCREENING BUSINESS INFORMATION FOR CLAIMS OF CONFIDENTIALITY (APR 1984)

(a) Whenever collecting information under this contract, the Contractor agrees to comply with the following requirements:

(1) If the Contractor collects information from public sources, such as books, reports, journals, periodicals, public records, or other sources that are available to the public without restriction, the Contractor shall submit a list of these sources to the appropriate program office at the time the information is initially submitted to EPA. The Contractor shall identify the information according to source.

(2) If the Contractor collects information from a State or local Government or from a Federal agency, the Contractor shall submit a list of these sources to the appropriate program office at the time the information is initially submitted to EPA. The Contractor shall identify the information according to source.

(3) If the Contractor collects information directly from a business or from a source that represents a business or businesses, such as a trade association:

(i) Before asking for the information, the Contractor shall identify itself, explain that it is performing contractual work for the U.S. Environmental Protection Agency, identify the information that it is seeking to collect, explain what will be done with the information, and give the following notice:

(A) You may, if you desire, assert a business confidentiality claim covering part or all of the information. If you do assert a claim, the information will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR part 2, Subpart B.

(B) If no such claim is made at the time this information is received by the Contractor, it may be made available to the public by the Environmental Protection Agency without further notice to you.

(C) The contractor shall, in accordance with FAR part 9, execute a written agreement regarding the limitations of the use of this information and forward a copy of the agreement to the Contracting Officer.

(ii) Upon receiving the information, the Contractor shall make a written notation that the notice set out above was given to the source, by whom, in what form, and on what date.

(iii) At the time the Contractor initially submits the information to the appropriate program office, the Contractor shall submit a list of these sources, identify the information according to source, and indicate whether the source made any confidentiality claim and the nature and extent of the claim.

(b) The Contractor shall keep all information collected from nonpublic sources confidential in accordance with the clause in this contract entitled "Treatment of Confidential Business Information" as if it had been furnished to the Contractor by EPA.

(c) The Contractor agrees to obtain the written consent of the Contracting Officer, after a written determination by the appropriate program office, prior to entering into any subcontract that will require the subcontractor to collect information. The Contractor agrees to include this clause, including this paragraph (c), and the clause entitled "Treatment of Confidential Business Information" in all subcontracts awarded pursuant to this contract that require the subcontractor collect information.

(End of clause)

1552.235-71 Treatment of confidential business information.

As prescribed in 1535.007-70(b), insert the following contract clause in all types of contracts when the Contracting Officer has determined that in the performance of a contract, EPA may furnish confidential business information to the Contractor that EPA obtained under the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251, *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), or the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). EPA regulations on confidentiality of business information in 40 CFR part 2 subpart B require that the Contractor agree to the clause entitled "Treatment of Confidential Business Information" before any confidential business information may be furnished to the Contractor:

TREATMENT OF CONFIDENTIAL BUSINESS INFORMATION (APR 1984)

(a) The Contracting Officer, after a written determination by the appropriate program office, may disclose confidential business information to the Contractor necessary to carry out the work required under this contract. The Contractor agrees to use the confidential information only under the following conditions:

(1) The Contractor and Contractor's Employees shall: (i) use the confidential information only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than EPA employees without the prior written approval of the Assistant General Counsel for Contracts and Information Law; and (iii) return to the Contracting Officer all copies of the information, and any abstracts or excerpts therefrom, upon request by the Contracting Officer, whenever the information is no longer required by the Contractor for the performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of confidential information are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(4) The Contractor shall not use any confidential information supplied by EPA or obtained during performance hereunder to compete with any business to which the confidential information relates.

(b) The Contractor agrees to obtain the written consent of the Contracting Officer, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of confidential business information by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded, pursuant to this contract, that require the furnishing of confidential business information to the subcontractor.

(End of clause)

1552.235-72 Data security—FIFRA and/or TSCA confidential business information.

As prescribed in 1535.007-70(c), insert the following contract clause when the contract involves access to confidential business information related to either the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Toxic Substances Control Act (TSCA) and the "Treatment of Confidential Business Information" clause (1552.235-71) and the "Screening Business Information for Claims of Confidentiality" clause (1552.235-70) are also used.

DATA SECURITY—FIFRA AND/OR TSCA CONFIDENTIAL BUSINESS INFORMATION (APR 1984)

The Contractor shall handle Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and/or Toxic Substances Control Act (TSCA) confidential business information in accordance with the contract clause entitled "Treatment of Confidential Business Information" and "Screening Business Information for Claims of Confidentiality," the provisions set forth below, and the Contractor's approved detailed security plan.

(a) The Contracting Officer, after a written determination by the appropriate program office, may disclose confidential business information to the Contractor necessary to carry out the work required under this contract. The Contractor shall protect the confidential business information and confidential business information used in its computer operations in accordance with the following requirements.

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the Contractor's security plan(s) approved by EPA.

(2) The Contractor shall, upon request by the Contracting Officer, permit access to and inspection of the Contractor's facilities in use under this contract by representatives of EPA's Assistant Administrator for Administration and Resources Management, EPA's Program Support Division of the Office of Pesticide Programs, EPA's Management Support Division of the Office of Toxic Substances, EPA's Management Information System Division or by the Project Officer.

(3) The Contractor Document Control Officer (DCO) shall obtain a signed copy of the FIFRA/TSCA "Contractor Employee Confidentiality Agreement" from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(b) The Contractor agrees that these requirements concerning protection of confidential business information are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that confidential business information obtained by EPA under the Fungicide, Insecticide, and Rodenticide Act and/or the Toxic Substances Control Act may not be disclosed except as authorized by the Act(s), and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in FIFRA [7 U.S.C. 136h(f)] and/or TSCA [15 U.S.C. 2613(d)]. For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those disclosures set forth in the clause entitled "Treatment of Confidential Business Information."

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of confidential business information to the subcontractor.

(e) The Contractor shall return all logs and employee confidentiality agreements to EPA at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the "Changes" clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(End of clause)

1552.236-70 Samples and certificates.

As prescribed in 1536.521, insert the following contract clause in construction contracts.

SAMPLES AND CERTIFICATES (APR 1984)

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance of materials and construction specified in the contract performance requirements. Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

1552.236-71 Additive or deductive items.

As prescribed in 1536.570, insert the following solicitation provision in Invitations for Bids for construction that provides for additive or deductive items.

ADDITIVE OR DEDUCTIVE ITEMS (APR 1984)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds.

For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case, all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order or priority need be followed only for determining the low bidder. If the amount of funds determined and recorded in the contract file by the Contracting Officer as available for the project prior to the opening of bids proves insufficient so as to preclude an award, the low bidder for purposes of award shall be the conforming responsible bidder offering the low amount for the base bid item, exclusive of any additive or deductive items. After determination of the low bidder as stated, award in the best interests of the Government may be made on the selected base bid and any combination of additive or deductive items for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items. After the contract has been awarded, any work which should have been part of the contract offered by the solicitation originally (i.e., any additive or deductive item) may be procured by either of the following methods of acquisition listed in descending order of priority:

(a) Full and open competition resulting in a new contract.

(b) Negotiation of a supplemental agreement to the existing contract justified under FAR 6.302.

[49 FR 8867, Mar. 8, 1984, as amended at 50 FR 14360, Apr. 11, 1985]

(End of provision)

1552.237-70 Contract publication review procedures.

As prescribed in 1537.110, insert the following contract clause when the products of the contract are subject to contract publication review.

CONTRACT PUBLICATION REVIEW PROCEDURES (APR 1984)

(a) Material generated under this contract intended for release to the public is subject to the Agency's publication review process in accordance with the EPA Order on this subject and the following.

(b) Except as indicated in paragraph (c) below, the Contractor shall not independently publish or print material generated under this contract until after completion of the EPA review process. The Project Officer will notify the Contractor of review completion within —— calendar days after the Contractor's transmittal to the Project Officer of material generated under this contract. If the Contractor does not receive Project Officer notification within this period, the Contractor shall immediately notify the Contracting Officer in writing.

(c) The Contractor may publish, in a scientific journal, material resulting directly or indirectly from work performed under this contract, subject to the following:

(1) The Contractor shall submit to the Contracting Officer and the Project Officer, at least 30 days prior to publication, a copy of any paper, article, or other dissemination of information intended for publication.

(2) The Contractor shall include the following statement in a journal article which has not been subjected to EPA review: "Although the research described in this article has been funded wholly or in part by the United States Environmental Protection Agency contract (number) to (Name of Contractor), it has not been subject to the Agency's review and therefore does not necessarily reflect the views of the Agency, and no official endorsement should be inferred."

(3) Following publication of the journal article, the Contractor shall submit five copies of the journal article to the Project Officer, and one copy to the Contracting Officer.

(d) If the Government has completed the review process and agreed that the contract material may be attributed to EPA, the Contractor shall include the following statement in the document:

This material has been funded wholly or in part by the United States Environmental Protection Agency under contract (number) to (name). It has been subject to the Agency's review, and it has been approved for publication as an EPA document. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

(e) If the Government has completed the review process, but decides not to publish the material, the Contractor may independently publish and distribute the material for its own use and its own expense, and shall include the following statement in any independent publication:

Although the information described in this article has been funded wholly or in part by the United States Environmental Protection Agency under contract (number) to (name), it does not necessarily reflect the views of the Agency and no official endorsement should be inferred.

(End of clause)

1552.237-71 Technical direction.

As prescribed in 1537.110, insert the following contract clause in cost-reimbursement contracts.

TECHNICAL DIRECTION (APR 1984)

(a) The Project Officer will provide technical direction on contract performance. Technical direction includes:

(1) Direction to the Contractor which assists him in accomplishing the Statement of Work.

(2) Comments on and approval of reports or other deliverables.

(b) Technical direction must be within the contract Statement of Work. The Project Officer does not have the authority to issue technical direction which (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the "Changes" clause; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the period of performance; or (5) changes any of the other express terms or conditions of the contract.

(c) Technical direction will be issued in writing by the Project Officer or confirmed by him in writing within five (5) calendar days after verbal issuance.

(End of clause)

1552.237-72 Key personnel.

As prescribed in 1537.110, insert the following contract clause when it is necessary for contract performance to identify Contractor key personnel.

KEY PERSONNEL (APR 1984)

(a) The Contractor shall assign to this contract the following key personnel:

____

____

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. This clause will be modified to reflect any approved changes of key personnel.

(End of clause)

1552.237-73 Consultant services and consent.

As prescribed in 1537.110, insert the following contract clause in contracts where the services of consultants are required. Enter "none" in paragraph (b) if consent is not given for one or more consultants at the time of award.

CONSULTANT SERVICES AND CONSENT (APR 1984)

(a) The Contractor shall obtain the consent of the Contracting Officer prior to using any consultant on this contract. The Contractor shall determine whether any consultant that is used has in effect an agreement with another Federal agency for similar or like services and, if so, shall notify the Contracting Officer.

(b) The Contractor may use the following consultants for the period of time at the rate shown.

Name	Number of (days) (hours)	Not to exceed the (daily) (hourly) rate of
....	....	$.......
....	....	$.......

(End of clause)

1552.237-74 Publicity.

As prescribed in 1537.110, insert the following contract clause in contracts pertaining to the removal or remedial activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) ("Super Fund") program. The term "on-scene coordinator" may be substituted with "Project Officer."

PUBLICITY (APR 1984)

(a) The Contractor agrees to notify and obtain the verbal approval of the on-scene coordinator (or Project Officer) prior to releasing any information to the news media regarding the removal or remedial activities being conducted under this contract.

(b) It is also agreed that the Contractor shall acknowledge EPA support whenever the work funded in whole or in part by this contract is publicized in any news media.

(End of clause)

1552.237-75 Paperwork Reduction Act.

As prescribed in 1537.110, insert this contract clause in any contract requiring the collection of identical information from ten (10) or more public respondents.

PAPERWORK REDUCTION ACT (APR 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten (10) or more public respondents, the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

1552.242-70 Indirect costs.

As prescribed in 1542.705-70, insert the following clause in all cost-reimbursement type contracts. If ceilings are not being established, enter "not applicable" in (c).

INDIRECT COSTS (APR 1984)

(a) In accordance with paragraph (d) of the "Allowable Cost and Payment" clause, the final indirect cost rates applicable to this contract shall be established between the Contractor and the appropriate Government representative (EPA, other Government agency, or auditor), as provided by FAR 42.703(a). EPA's procedures require a Contracting Officer determination of indirect cost rates for its contracts. In those cases where EPA is the cognizant agency (see FAR 42.705-1), the final rate proposal shall be submitted to the cognizant audit activity and to the following designated Contracting Officer: Environmental Protection Agency, Chief, Cost Policy and Rate Negotiation Section (PM-214-F), Procurement and Contracts Management Division, Washington, DC 20460.

Where EPA is not the cognizant agency, the final rate proposal shall be submitted to the above-cited address, to the cognizant audit agency, and to the designated Contracting Officer of the cognizant agency. Upon establishment of the final indirect cost rates, the Contractor shall submit an executed Certificate of Current Cost or Pricing Data (see FAR 15.804-4) applicable to the data furnished in connection with the final rates to the cognizant audit agency. The final rates shall be contained in a written understanding between the Contractor and the appropriate Government representative. Pursuant to the "Allowable Cost and Payment" clause, the allowable indirect costs under this contract shall be obtained by applying the final agreed upon rate(s) to the appropriate bases.

(b) Until final annual indirect cost rates are established for any period, the Government shall reimburse the contractor at billing rates established by the appropriate Government representative in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

Cost center	Period	Rate	Base
....	....	....	....
....	....	....	....

These billing rates may be prospectively or retroactively revised by mutual agreement, at the request of either the Government or the Contractor, to prevent substantial overpayment or underpayment.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, ceilings are hereby established on indirect costs reimbursable under this contract. The Government shall not be obligated to pay the Contractor any additional amount on account of indirect costs in excess of the ceiling rates listed below:

Cost center	Period	Rate	Base

(End of clause)

1552.245-70 Decontamination of government property.

As prescribed in 1545.106(a) and 1545.303-71, insert the following contract clause when it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property in the cleanup of hazardous or toxic substances in the environment.

DECONTAMINATION OF GOVERNMENT PROPERTY (APR 1984)

In addition to the requirements of the "Government Property" clause, the Contractor shall certify in writing that any Government-furnished property or Contractor-acquired property is returned to the Government free from contamination by any hazardous or toxic substances.

(End of clause)

1552.245-71 Government-furnished data.

As prescribed in 1545.106(b), insert the following contract clause in any contract that the Government is to furnish the Contractor data. Identify in the clause the data to be provided.

GOVERNMENT-FURNISHED DATA (APR 1984)

(a) The Government shall deliver to the Contractor the Government-furnished data described in the contract. If the data, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the "Changes" clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished data shall remain in the Government.

(c) The Contractor shall use the Government-furnished data only in connection with this contract.

(d) The following data will be furnished to the Contractor on or about the time indicated:

____

____

____

(End of clause)

1552.245-72 Fabrication or acquisition of nonexpendable property.

As prescribed in 1545.106(c), insert the following contract clause in all cost-reimbursement type contracts or contracts with cost-reimbursement portions.

FABRICATION OR ACQUISITION OF NONEXPENDABLE PROPERTY (APR 1984)

The Contractor shall not fabricate nor acquire under this contract, either directly or indirectly through a subcontract, any item of nonexpendable property without written approval from the Contracting Officer.

(End of clause)

1552.246-70 Quality Assurance (QA) Program plan.

As prescribed in 1546.201(b), insert the following solicitation provision in Requests for Proposals if a program plan is required. A QA program plan is a general statement of an offeror's capability for QA.

QUALITY ASSURANCE (QA) PROGRAM PLAN (APR 1984)

Each offeror, as a separate and identifiable part of its technical proposal, shall submit a Quality Assurance (QA) program plan setting forth the offeror's capability for quality assurance. The plan shall address the following:

(a) A statement of policy concerning the organization's commitment to implement a Quality Control/Quality Assurance program to assure generation of measurement data of adequate quality to meet the requirements of the Statement of Work.

(b) An organizational chart showing the position of a QA function or person within the organization. It is highly desirable that the QA function or person be independent of the functional groups which generate measurement data.

(c) A delineation of the authority and responsibilities of the QA function or person and the related data quality responsibilities of other functional groups of the organization.

(d) The type and degree of experience in developing and applying Quality Control/Quality Assurance procedures to the proposed sampling and measurement methods needed for performance of the Statement of Work.

(e) The background and experience of the proposed personnel relevant to accomplish the QA specifications in the Statement of Work.

(f) The offeror's general approach for accomplishing the QA specifications in the Statement of Work.

(End of provision)

1552.246-71 Quality Assurance (QA) Project Plan.

As prescribed in 1546.201(c)(1), insert the following solicitation provision in Requests for Proposals when a QA project plan is required as part of the proposal submission. A QA project plan is a specific delineation of an offeror's approach for accomplishing the QA specifications in a Statement of Work. When offerors are required to submit a project plan, a program plan may or may not be required. The project plan may be a part of an offeror's technical proposal, or a deliverable under the contract.

QUALITY ASSURANCE (QA) PROJECT PLAN (APR 1984)

The offeror, as a separate and identifiable part of its technical proposal, shall submit a Quality Assurance (QA) project plan which shall describe specific procedures and responsibilities needed to accomplish the QA specifications in the Statement of Work. The project plan shall consist of the following form and content:

(a) Title page, with provision for approval signatures.

(b) Table of contents.

(c) Project description.

(d) Project organization(s) and responsibilities.

(e) Quality Assurance objectives for measurement data, in terms of precision, accuracy, completeness, representativeness and comparability.

(f) Sampling procedures.

(g) Sample custody.

(h) Calibration procedures, references, and frequency.

(i) Analytical procedures.

(j) Data reduction, validation, and reporting.

(k) Internal quality control checks and frequency.

(l) Quality assurance performance audits, system audits, and frequency.

(m) Quality Assurance reports to management.

(n) Preventive maintenance procedures and schedules.

(o) Specific procedures to be used in routinely assessing data precision and accuracy, representativeness, comparability, and completeness of the specific measurement parameters involved.

(p) Correction action.

(End of provision)

[49 FR 8867, Mar. 8, 1984; 49 FR 24735, June 15, 1984]

1552.246-72 Quality Assurance (QA) Project Plan documentation.

As prescribed in 1546.201(c)(2), insert the following clause in negotiated contracts when QA Project Plan Documentation is needed. A QA project plan is a specific delineation of an offeror's approach for accomplishing the QA specifications in a Statement of Work. When offerors are required to submit a project plan, a program plan may or may not be required. When a QA project plan was not a required part of the technical proposal, the project plan may be required as a deliverable under the contract by use of the following. However, the Statement of Work must contain a specification for the form and content of the project plan before this paragraph may be used.

QUALITY ASSURANCE (QA) PROJECT PLAN DOCUMENTATION (APR 1984)

(a) The Contractor shall submit to the Project Officer —— copies of a Draft Project Plan for Quality Assurance within —— days after the effective date of the contract.

(b) The Government will review and return the Draft Project Plan indicating approval or disapproval, and comments, if necessary, within —— calendar days. In the event the government delays review and return of the Draft Project Plan beyond the period specified, the Contractor shall immediately notify the Contracting Officer in writing. The Contractor shall deliver the Final Project Plan within —— days after the effective date of the contract.

(c) The Contracting Officer will incorporate the approved Quality Assurance Project Plan into the contract.

(End of clause)

PART 1553—FORMS

Sec.

1553.000 Scope of part.

Subpart 1553.2—Prescription of Forms

1553.209 Contractor qualifications.
1553.209-70 EPA Form 1900-26, Contracting Officer's Evaluation of Contractor Performance.
1553.209-71 EPA Form 1900-27, Project Officer's Evaluation of Contractor Performance.
1553.213 Small purchases and other simplified purchase procedures.
1553.213-70 EPA Form 1900-8, Procurement Request/Order.
1553.216 Types of contracts.
1553.216-70 EPA Form 1900-41A, CPAF Contract Summary of Significant Performance Observation.
1553.216-71 EPA Form 1900-41B, CPAF Contract Individual Performance Event.
1553.232 Contract financing.
1553.232-70 EPA Form 1900-3, Assignee's Release.
1553.232-71 EPA Form 1900-4, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.
1553.232-72 EPA Form 1900-5, Contractor's Assignment of Refunds, Rebates, and Credits.
1553.232-73 EPA Form 1900-6, Contractor's Release.
1553.232-74 EPA Form 1900-10, Contractor's Cumulative Claim and Reconciliation.
1553.232-75 EPA Form 1900-34, Guide for the Preparation of Contractor's Claims for Reimbursement of Costs and Fees Under Cost-Reimbursement Type Contracts.
1553.232-76 EPA Form 1900-34A, Guide for the Preparation of Contractor's Claims for Reimbursement Under Cost-Plus-Award-Fee (CPAF) Type Contracts.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8886, Mar. 8, 1984, unless otherwise noted.

EDITORIAL NOTE: Forms referenced in part 1553 do not appear in the Code of Federal Regulations.

1553.000 Scope of part.

This part prescribes Agency forms for use in acquisitions and contains requirements and information generally applicable to the forms.

Subpart 1553.2—Prescription of Forms

1553.209 Contractor qualifications.

1553.209-70 EPA Form 1900-26, Contracting Officer's Evaluation of Contractor Performance.

As prescribed in 1509.170-4(a), EPA Form 1900-26 shall be used by the Contracting Officer to record his/her evaluation of Contractor performance.

1553.209-71 EPA Form 1900-27, Project Officer's Evaluation of Contractor Performance.

As prescribed in 1509.170-4(a), EPA Form 1900-27 shall be used by the Project Officer to record his/her evaluation of Contractor performance.

1553.213 Small purchases and other simplified purchase procedures.

1553.213-70 EPA Form 1900-8, Procurement Request/Order.

As prescribed in 1513.505-2, EPA Form 1900-8 may be used in lieu of Optional Forms 347 and 348 for individual purchases.

1553.216 Types of contracts.

1553.216-70 EPA Form 1900-41A, CPAF Contract Summary of Significant Performance Observation.

As prescribed in 1516.404-278, EPA Form 1900-41A shall be used to document significant performance observations under CPAF contracts.

1553.216-71 EPA Form 1900-41B, CPAF Contract Individual Performance Event.

As prescribed in 1516.404-278, EPA Form 1900-41B shall be used to document individual performance events under CPAF contracts.

1553.232 Contract financing.

1553.232-70 EPA Form 1900-3, Assignee's Release.

As prescribed in 1532.805-70(a), the EPA Form 1900-3 is required to be submitted by the assignee for cost-reimbursement contracts prior to final payment under the contract.

1553.232-71 EPA Form 1900-4, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.

As prescribed in 1532.805-70(b), the EPA Form 1900-4 must accompany the assignee's release prior to final payment under cost-reimbursement contracts.

1553.232-72 EPA Form 1900-5, Contractor's Assignment of Refunds, Rebates, and Credits.

As prescribed in 1532.805-70(c), the EPA Form 1900-5 must be prepared by the Contractor prior to final payment under cost-reimbursement contracts and must accompany the Contractor's release.

1553.232-73 EPA Form 1900-6, Contractor's Release.

As prescribed in 1532.805-70(d), the EPA Form 1900-6 must be submitted by the Contractor under cost-reimbursement contracts prior to final payment thereunder.

1553.232-74 EPA Form 1900-10, Contractor's Cumulative Claim and Reconciliation.

As prescribed in 1532.170(a), the EPA Form 1900-10 shall be used for an accounting of the cumulative charges and costs for cost-reimbursement contracts from the inception of the contract to completion. It shall be submitted by the Contractor along with the completion voucher.

1553.232-75 EPA Form 1900-34, Guide for the Preparation of Contractor's Claims for Reimbursement of Costs and Fees Under Cost-Reimbursement Type Contracts.

As prescribed in 1532.170(b), the Contracting Officer shall insert EPA Form 1900-34 in all cost-reimbursement type contracts awarded to Contractors unfamiliar with the Guide.

1553.232-76 EPA Form 1900-34A, Guide for the Preparation of Contractor's Claims for Reimbursement Under Cost-Plus-Award-Fee (CPAF) Type Contracts.

As prescribed in 1532.170(c), the Contracting Officer shall insert EPA Form 1900-34A in all CPAF contracts awarded to Contractors unfamiliar with the Guide.

Appendix I to Chapter 15—Environmental Protection Agency; Class Justification for Other Than Full and Open Competition in Acquisitions From the Federal Prison Industries and the Government Printing Office

1. The Environmental Protection Agency (EPA) anticipates the acquisition of supplies from the Federal Prison Industries (UNICOR) and the acquisition of Government printing and related supplies from the Government Printing Office (GPO) to meet the needs of the Agency.

2. The Agency is authorized to make these acquisitions from the UNICOR and GPO without full and open competition under the authority in 41 U.S.C. 253(c)(5) as sources required by statute, i.e., 18 U.S.C. 4124 and 44 U.S.C. 501-504, 1121.

3. The anticipated cost of these acquisitions to the Agency will be fair and reasonable.

4. This class justification applies to any proposed acquisition made by the EPA from the UNICOR or GPO.

5. This class justification will remain in effect until April 1, 1988.

6. The undersigned certifies that this class justification is accurate and complete to the best of his knowledge and belief.

[50 FR 14361, Apr. 11, 1985]

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

(Parts 1600 to 1699)

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SUBCHAPTER A—GENERAL

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1601.1—Purpose, Authority, Issuance

Sec.
1601.101 Purpose.
1601.102 Authority.
1601.103 Applicability.
1601.104 Issuance.
1601.104-1 Publication and code arrangement.
1601.104-2 Arrangement of regulation.
1601.105 OMB approval under the Paperwork Reduction Act.

Subpart 1601.3—Agency Acquisition Regulation (FEHBAR)

1601.301 Policy.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16037, May 1, 1987, unless otherwise noted.

Subpart 1601.1—Purpose, Authority, Issuance

1601.101 Purpose.

(a) This subpart establishes chapter 16, Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation, within Title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be FEHBAR.

(b) The purpose of the FEHBAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering contracts with health insurance carriers in the Federal Employees Health Benefits Program (FEHBP).

1601.102 Authority.

The FEHBAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. chapter 89 and other applicable law and regulation.

1601.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEHBP pursuant to 5 U.S.C. chapter 89. The FEHBAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEHBP.

1601.104 Issuance.

1601.104-1 Publication and code arrangement.

(a) The FEHBAR and its subsequent changes are published in

(1) Daily issues of the FEDERAL REGISTER; and

(2) Cumulative form of the Code of Federal Regulations.

(b) The FEHBAR is issued as chapter 16 of title 48 of the Code of Federal Regulations.

1601.104-2 Arrangement of regulation.

(a) *General.* The FEHBAR conforms with the arrangement and numbering system prescribed by FAR 1.104. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding FEHBAR part, subpart, etc. The FEHBAR is to be used in conjunction with the FAR and the order for use is:

(1) FAR;

(2) FEHBAR.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of chapter 16 material that has been published in the FEDERAL REGISTER will be to title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of chapter 16 may be identified as "FEHBAR" followed by the section number.

1601.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

Provision	Control No.
FEHBAR 1604.705	3206-0145
FAR 9.1	3206-0145

Subpart 1601.3—Agency Acquisition Regulation (FEHBAR)

1601.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEHBP shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with the unique nature of health care procurements, or necessary to satisfy specific needs of the Office of Personnel Management shall be implemented as amendments to the FEHBAR and published in the FEDERAL REGISTER, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides that are necessary to clarify or implement the FEHBAR *within* OPM may be issued by agency officials specifically designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the FEHBAR must—

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

PART 1602—DEFINITIONS OF WORDS AND TERMS

Sec.
1602.000-70 Scope of part.

Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.
1602.170-1 Carrier.
1602.170-2 Community rate.
1602.170-3 Comprehensive medical plan.
1602.170-4 Contractor.
1602.170-5 Director.
1602.170-6 Experience rate.
1602.170-7 FEHBP.
1602.170-8 Health benefits plan.
1602.170-9 Letter of credit.
1602.170-10 OPM.
1602.170-11 Similarly sized subscriber groups.
1602.170-12 Subcontractor.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16038, May 1, 1987, unless otherwise noted.

1602.000-70 Scope of part.

This part defines words and terms commonly used in this regulation.

Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

1602.170-1 Carrier.

Carrier, as defined in 5 U.S.C. 8901(7), means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization.

1602.170-2 Community rate.

(a) *Community rate* means a rate of payment based on a per member per month capitation rate or its equivalent that applies to a combination of the subscriber groups for a comprehensive medical plan. This capitation rate or its equivalent is a market price consistent with FAR 15.804-3. References in this subchapter to "price analysis" or "established market price" relating to the applicability of policy and contract clauses refer to comprehensive medical plans using community rates.

(b) *Adjusted community rate* means a community rate which has been adjusted for expected use of medical resources of the FEHBP group. An adjusted community rate is a prospective rate and can not be retroactively revised to reflect actual experience, utilization, or costs of the FEHBP group.

[55 FR 27414, July 2, 1990]

1602.170–3 Comprehensive medical plan.

Comprehensive Medical Plan means a plan as defined under 5 U.S.C. 8903(4).

1602.170–4 Contractor.

Contractor means carrier.

1602.170–5 Director.

Director means the Director of the Office of Personnel Management.

1602.170–6 Experience rate.

Experience rate means a rate for a given group that is the result of that group's actual paid claims, administrative expenses, retentions, and estimated claims incurred but not reported, adjusted for benefit modifications, utilization trends, and economic trends. Actual paid claims include any actual or negotiated benefits payments made to providers of medical services for the provision of health care such as capitation not adjusted for specific groups, per diems, and Diagnostic Related Group (DRG) payments.

[54 FR 27414, July 2, 1990]

1602.170–7 FEHBP.

FEHBP means the Federal Employees Health Benefits Program.

1602.170–8 Health benefits plan.

Health benefits plan, as defined in 5 U.S.C. 8901(6), means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services.

1602.170–9 Letter of credit.

Letter of credit means the method, established in 31 CFR part 205, by which certain carriers, and their underwriters if authorized, receive recurring premium payments and contingency reserve payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter of credit arrangement for payment under this part, the terms "carrier reserves," "carrier-held reserves," and "special reserves" include any balance in the carrier's letter of credit account.

[53 FR 51783, Dec. 23, 1988]

1602.170–10 OPM.

OPM means the Office of Personnel Management.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988]

1602.170–11 Similarly sized subscriber groups.

Similarly sized subscriber groups means a comprehensive medical plan's two employer groups which best meet all of the following conditions:

(a) Have total number of contracts at the time of the rate proposal arithmetically closest in size to the previous September's FEHB subscriber enrollment, as determined by OPM;

(b) Purchase substantially the same basic benefit package proposed for the Federal group; and

(c) Are renewed during the plan's fiscal year. Contracts with a governmental authority or program or any health benefits program for employees of states, political subdivisions of states and other public entities may be used if they are community rated.

[55 FR 27414, July 2, 1990]

1602.170–12 Subcontractor.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor, except for providers of direct medical services or supplies pursuant to the Carrier's health benefits plan.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988, and further redesignated at 55 FR 27414, July 2, 1990]

PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

Sec.
1603.701 Policy.
1603.702 Additional guidelines.
1603.703 Contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16039, May 1, 1987, unless otherwise noted.

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

1603.701 Policy.

(a) OPM prepares and distributes or makes available to Federal employees and annuitants a comparison booklet which presents summary information and a benefits brochure which details benefits, limitations, and premium rates for all participating plans. OPM does not encourage, support, or reimburse participating carriers for the costs of advertisements. However, while OPM believes that advertising is unnecessary, it recognizes that the decision to use advertising rests with each carrier.

(b) OPM discourages advertising that is misleading or deceptive. This includes advertising that is directed at other carriers' plans participating in the Program and which uses incomplete or inappropriate comparisons or disparaging or minimizing techniques. Such unfair practices are prejudicial to the interests of the vast majority of carriers whose advertising is fair and accurate.

(c) Failure to conform to the requirements of this subpart shall be a material breach of the contract and may result in withdrawal of approval to continue participation in the FEHB Program.

1603.702 Additional guidelines.

Any advertisements which identify a carrier's participation in the FEHBP shall—

(a) Be limited to the merits of the carrier's FEHBP plan and shall be limited to factual statements of the benefits and rates offered by that plan. The official document for benefit and rate comparisons among FEHBP plans is the comparison chart issued by OPM.

(b) Not use the FEHBP logo.

(c) Recognize that the officially approved plan brochure is the sole contractual statement of benefits, limitations, and exclusions. All advertisements that in any way discuss plan benefits shall contain the following statement:

> This is a summary (or brief description) of the features of the (plan's name). Before making a final decision, please read the plan's officially approved brochure, (brochure number). All benefits are subject to the definitions, limitations, and exclusions set forth in the official brochure.

(d) Set forth the rates for the plan, if the advertisements discuss benefits.

(e) Not give instructions on enrollment. Statements on enrollment procedures, requirements, or eligibility shall be limited to those such as:

> To sign up, fill out a Health Benefits Registration Form (Standard Form 2809) from your personnel office indicating the enrollment you want:
>
> The enrollment codes for (plan's name) are:
>
> Self Only ________ Enrollment Code________
>
> Self and Family ________ Enrollment Code ________
>
> The form must then be returned to your personnel office before the (date) deadline. Your (plan's name) coverage will begin the first pay period in January, (year). If you are a retired Federal employee and need forms, contact the Office of Personnel Management at P.O. Box 809, Washington, DC 20044.

1603.703 Contract clause.

The clause at 1652.203-70 shall be inserted in all FEHBP contracts.

PART 1604—ADMINISTRATIVE MATTERS

Subpart 1604.7—Contractor Records Retention

Sec.
1604.703 Policy.
1604.705 Specific retention periods.

Subpart 1604.70—Coordination of Benefits

1604.7001 Coordination of benefits clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16039, May 1, 1987, unless otherwise noted.

Subpart 1604.7—Contractor Records Retention

1604.703 Policy.

In view of the unique payment schedules of FEHBP contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1).

1604.705 Specific retention periods.

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215-2 "Audit—Negotiation," the contracting officer shall insert the clause at 1652.204-70 in all FEHBP contracts.

Subpart 1604.70—Coordination of Benefits

1604.7001 Coordination of benefits clause.

OPM expects all FEHBP plans to coordinate benefits. Accordingly, the clause set forth at 1652.204-71 shall be inserted in all FEHBP contracts.

PART 1605—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1605.000 Applicability.

FAR part 5 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

[52 FR 16039, May 1, 1987]

PART 1606—COMPETITION REQUIREMENTS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1606.001 Applicability.

FAR part 6 has no practical application to FEHBP contracts in view of the statutory exception provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1614—SEALED BIDDING

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1614.000 Applicability.

FAR part 14 has no practical application to FEHBP contracts in view of the statutory exemption provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

PART 1615—CONTRACTING BY NEGOTIATION

Subpart 1615.1—General Requirements for Negotiation

Sec.
1615.170 Negotiation authority.

Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

1615.401 Applicability.

Subpart 1615.6—Source Selection

1615.602 Applicability.

Subpart 1615.8—Price Negotiation

1615.802 Policy.
1615.804-70 Certificate of accurate pricing for community rate plans.
1615.804-71 Supplemental representation for SF 1412.
1615.804-72 Rate reduction for defective pricing or defective cost or pricing data.
1615.805-70 Carrier investment of FEHB funds.
1615.805-71 Investment income clause.

Subpart 1615.9—Profit

1615.902 Policy.
1615.905 Profit analysis factors.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16040, May 1, 1987, unless otherwise noted.

Subpart 1615.1—General Requirements for Negotiation

1615.170 Negotiation authority.

The authority to negotiate FEHBP contracts is conferred by 5 U.S.C. 8902.

Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

1615.401 Applicability.

FAR subpart 15.4 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

Subpart 1615.6—Source Selection

1615.602 Applicability.

FAR subpart 15.6 has no practical application to the FEHBP because prospective contractors (carriers) are considered for inclusion in the FEHBP in accordance with criteria provided in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than on the basis of competition *between* prospective carriers.

Subpart 1615.8—Price Negotiation

1615.802 Policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.8 shall be implemented by applying the policies and procedures—to the extent practicable—as follows:

(a) Cost analysis for contracts where premiums and subscription income are determined on the basis of experience rating; and

(b)(1) Price analysis for contracts where premiums and subscription income are based on community rates (market prices). For contracts with fewer than 1,500 FEHBP subscribers, OPM may rely on a basic reasonableness test in combination with a carrier's representation that the market price submitted on SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, is based on the price offered to its similarly sized subscriber groups (see FEHBAR 1602.170-11).

(2) For contracts with 1,500 FEHBP subscribers or more and for contracts with fewer than 1,500 FEHBP subscribers that do not use the SF 1412, OPM shall require that the plan provide the data and methodology used to determine the FEHBP rates. OPM shall also require the data and methodology used to determine the rates for the plan's similarly sized subscriber groups.

(3) Contracts will also be subject to a price adjustment if it is determined subsequently that different market prices were actually used for the similarly sized subscriber groups as defined in 1602.170-11. Such adjustments shall be identified by the carrier and applied against its FEHBP rate(s) for the subsequent contract period(s).

(c) The application of FAR 15.802(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based on cost analysis.

[52 FR 16040, May 1, 1987, as amended at 55 FR 27414, July 2, 1990]

1615.804-70 Certificate of accurate pricing for community rate plans.

When a carrier proposes a community rate as defined by FEHBAR 1602.170-2, the Contracting Officer shall require the carrier to execute the Certificate of Accurate Pricing for Community Rated Plans contained in this section unless the carrier has been exempt from filing certified cost or pricing data. The Certificate shall be executed each time a proposal is made.

CERTIFICATE OF ACCURATE PRICING FOR COMMUNITY RATED PLANS

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the Contracting Officer or the Contracting Officer's representative or designee in support of the ____*FEHBP rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract and are accurate, complete, and current as of the date this certificate is executed. The FEHBP rates were developed in a manner consistent with the rating methodology used to rate the Carrier's similarly sized subscriber groups (see FEHBAR 1602.170-11) and approved by OPM, except where the Carrier has elected to use the alternative methodology for adjusted community rating specified by OPM or other methodology approved by OPM.

Firm ____________________

Name ____________________

Title ____________________

Signature ____________________

Date of execution ____________________

* Identify the time period to which the rates apply. The rate must be either the actual rate in effect for the current contract term or a quoted rate for the next contract term.

(End of Certificate)

[55 FR 27414, July 2, 1990]

1615.804-71 Supplemental representation for SF 1412.

Carriers with less than 1,500 FEHBP subscribers may request an exemption from submission of certified cost and pricing data. The request for exemption is made on SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data (see FAR 53.301-1412), which contains a representation that all the statements made on or attached to the SF 1412 are correct. In addition to the representation made on the SF 1412, the Contracting Officer shall require the carrier to execute the Supplemental Representation for SF 1412 shown below. The carrier shall attach the supplemental representation to the SF 1412.

SUPPLEMENTAL REPRESENTATION FOR SF 1412

The Carrier represents that the market price used to determine the _____ * FEHBP rates is no greater than the market price quoted to the Carrier's similarly sized subscriber groups (see FEHBAR 1602.170-11); that adjustments made to the market price were consistent with the rating methodology used to rate the Carrier's similarly sized subscriber groups; and that the adjustments were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract.

Firm ____________________

Name ____________________

Title ____________________

Signature ____________________

Date of execution ——————————

*Identify the time period to which the rates apply. The rate must be either the actual rate in effect for the current contract term or a quoted rate for the next contract term.

[55 FR 27414, July 2, 1990]

1615.804-72 Rate reduction for defective pricing or defective cost or pricing data.

The clause set forth in 1652.215-70 shall be inserted in all FEHBP contracts based on established market price.

[55 FR 27415, July 2, 1990]

1615.805-70 Carrier investment of FEHB funds.

(a) This paragraph does not apply to contracts based on price analysis.

(b) The carrier is required to invest and reinvest all funds on hand, including any attributable to the special reserve or the reserve for incurred but unpaid claims, exceeding the funds needed to discharge promptly the obligations incurred under the contract.

(c) The carrier is required to credit income earned from its investment of FEHB funds to the special reserve on behalf of the FEHB Program. If a carrier fails to invest excess FEHB funds or to credit any income due the contract, for whatever reason, it shall return or credit any investment income lost to OPM or the special reserve.

(d) *Investment income.* Investment income is the net amount earned by the carrier after deducting investment expenses.

[52 FR 16040, May 1, 1987, as amended at 55 FR 27415, July 2, 1990]

1615.805-71 Investment income clause.

The clause set forth in 1652.215-71 shall be inserted in all contracts based on cost analysis.

Subpart 1615.9—Profit

1615.902 Policy.

(a) OPM will determine the profit or fee prenegotiation objective (service charge) portion of FEHBP contracts by use of a weighted guidelines structured approach when the pricing of such contracts is determined by cost analysis. The service charge so determined shall be the *total* service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to reserves or surpluses, or any other title) that may have been negotiated by the prime contractor with any subcontractor or underwriter.

(b) OPM will not guarantee a minimum service charge.

1615.905 Profit analysis factors.

(a) OPM contracting officers will apply a weighted guidelines method in developing the service charge prenegotiation objective for FEHBP contracts. The following factors as defined in FAR 15.905-1 will be applied to projected incurred claims and allowable administrative expenses:

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims and the volume and validity of disputed claims as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's *basic* responsibility for contract performance and will be a measure of the extent and nature of the contractor's contribution to the FEHBP through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a negative weight. Innovations of benefit to the FEHBP generally a plus weight, documented inattention or indifference to cost control a negative weight.

(2) *Contract cost risk.* OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract, in assessing the degree of cost responsibility and associated risk assumed by the contractor as a factor in negotiating profit. It should be noted that the "loss carry forward basis" of experi-

ence rated group insurance practices limits this factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor's share of *cost* risks only, taking into account such elements as the adequacy and reliability of data for estimating costs, etc., offset by the "loss carry forward basis" of experience rating.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents, and other concerns of the type enumerated in FAR 15.905-1(c) as a factor in negotiating profit. This factor will be related to the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will receive a plus weight; poor support will receive a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEHBP contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor shall be given a weight of zero. However, special purpose facilities or investments costs of direct benefit to the FEHBP that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost control.* OPM will consider contractor-initiated efforts such as improved benefit design, cost-sharing features, innovative peer review, or other professional cost containment efforts as a factor in negotiating profit. This factor shall be used to reward contractors with additional profit opportunities for self-initiated efforts to control contract costs.

(6) *Independent development.* OPM will consider any profit opportunities that may be directly related to relevant independent efforts such as the development of a unique and enhanced customer support system that is of demonstrated value to the FEHBP and for which developmental costs have not been recovered directly or indirectly through allowable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the program at large. Improvements and innovations recognized and rewarded under any of the other profit factors can not be considered.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth below:

Profit factor	Weight ranges (percent)
1. Contractor performance	−.2 to +.45.
2. Contract cost risk*	+.02 to +.2.
3. Federal socioeconomic programs.	−.05 to +.05.
4. Capital investments	0 to +.02.
5. Cost control	0 to +.35.
6. Independent development.	0 to +.03.

*The contract cost risk factor is subdivided into two parts: group size (.02 to .10) and other risk elements (0 to .10). With respect to the group size element, subweights should be assigned as follows:

Enrollment	Weight (percent)
10,000 or less	.06 to .10.
10,001-50,000	.05 to .09.
50,001-200,000	.04 to .07.
200,001-500,000	.03 to .06.
500,001 and over	.02 to .04.

PART 1616—TYPES OF CONTRACTS

Subpart 1616.1—Selecting Contract Types

Sec.
1616.102 Policies.
1616.105 Solicitation provision.

Subpart 1616.2—Fixed-Price Contracts

1616.270 Clause—contracts based on established market price (community rate).
1616.271 Clause—contracts based on cost analysis (experience rate).

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1616 appear at 55 FR 27415, July 2, 1990.

Subpart 1616.1—Selecting Contract Types

1616.102 Policies.

(a) FEHBP contracts in which benefits provided and subscription income are based on community rating (i.e., established market price) shall be negotiated fixed-price contracts with economic price adjustments.

(b) FEHBP contracts in which benefits provided and subscription income are based on experience rating shall be a combination of negotiated fixed-price contracts with provisions for a form of retroactive price redetermination.

1616.105 Solicitation provision.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 89 obviate the issuance of solicitations.

Subpart 1616.2—Fixed-Price Contracts

1616.270 Clause—contracts based on established market price (community rate).

The clause at 1652.216-70 shall be inserted in all FEHBP contracts based on established market price.

1616.271 Clause—contracts based on cost analysis (experience rate).

The clause at 1652.216-71 shall be inserted in all FEHBP contracts based on cost analysis.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1622.1—Basic Labor Policies

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

1622.103-70 Contract clause.

The clause at 1652.222-70 shall be inserted in all FEHBP contracts.

[55 FR 27415, July 2, 1990]

PART 1624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1624.1—Protection of Individual Privacy

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

1624.104 Contract clause.

Records retained by FEHBP carriers on Federal subscribers and members of their families serve the carriers' own commercial function of paying health benefits claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for carriers to keep certain records confidential. The clause at 1652.224-70 shall be inserted in all FEHBP contracts.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1631.2—Contracts With Commercial Organizations

Sec.

1631.200 Scope of subpart.
1631.201-70 FEHBP credits.
1631.203-70 FEHBP General and Administrative (G&A) expenses.
1631.205 Selected costs.
1631.205-70 FEHBP public relations and advertising costs.
1631.205-71 FEHBP bad debts.
1631.205-72 FEHBP compensation for personal services.
1631.205-73 FEHBP interest expense.
1631.205-74 FEHBP losses on other contracts.
1631.205-75 Selling costs.
1631.205-76 Trade, business, technical and professional activity costs.
1631.205-77 FEHBP start-up and other nonrecurring costs.
1631.205-78 FEHBP printed material costs.
1631.205-79 Mandatory statutory reserves.
1631.205-80 Major subcontractor service charges.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

Subpart 1631.2—Contracts With Commercial Organizations

1631.200 Scope of subpart.

The cost principles under this subpart apply only to contracts in which premiums and subscription income are determined on the basis of experience rating, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.

1631.201-70 FEHBP credits.

The provisions of FAR 31.201-5 shall apply to income, rebates, allowances, and other credits resulting from benefit payments that include, but are not limited to—

(a) Coordination of benefit refunds;

(b) Hospital year-end settlements;

(c) Uncashed and returned checks;

(d) Utilization review refunds;

(e) Refunds attributable to litigation with subscribers or providers of health services; and

(f) Erroneous benefit payment, overpayment, and duplicate payment recoveries.

1631.203-70 FEHBP General and Administrative (G&A) expenses.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a "dividend or retention formula."

1631.205 Selected costs.

1631.205-70 FEHBP public relations and advertising costs.

(a) The cost of media messages that are directed at advising current FEHBP subscribers on how to obtain benefits shall be an allowable expense within the meaning of FAR 31.205-1 because this service is directly related to performance of the FEHBP contract. If there is any question about the allowability of such a cost, the carrier may request advance approval regarding the content and cost of the message.

(b) Costs of media messages not provided for in paragraph (a) of this section are allowable if the content is specifically approved by the contracting officer and all of the following criteria are met:

(1) The primary effect of the message is to disseminate information on health care cost containment or preventive health care;

(2) The costs of the carrier's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the carrier's messages to be charged to the FEHBP in advance of the contract year.

(c) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the carrier (or subcontractor) for the purpose of enhancing its overall image or selling its health plan are not allowable.

1631.205-71 FEHBP bad debts.

Erroneous benefit payments are not automatically disallowed by FAR 31.205-3.

1631.205-72 FEHBP compensation for personal services.

Overtime on an FEHBP contract would normally meet the condition specified in FAR 22.103. Premiums for overtime, extra-pay shifts, and multi-shifts meeting the specified conditions shall be allowed without prior approval.

1631.205-73 FEHBP interest expense.

(a) Interest charges incurred in the administration of FEHBP contracts are not allowable in accordance with FAR 31.205-20. However, interest charges that are associated with the carrier's investment of FEHBP account funds are not considered administrative costs and may be allowable under very limited circumstances if all of the following criteria are met:

(1) Borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio;

(2) FEHBP funds are tied up in long-term securities;

(3) Liquidation of long-term securities would cost more than the cost of the interest;

(4) The interest rates charged are at or below current market rates; and

(5) Advance written approval of the contracting officer is obtained before such costs are incurred.

(b) The carrier must demonstrate on a case-by-case basis that borrowing rather than cashing in long-term investments shall actually result in cost savings to the FEHB Program. Satisfactory demonstration of cost savings is a prerequisite to contracting officer approval of the interest cost as a charge to the contract.

(c) If the interest charge is allowed, the risk factor in the service charge will be adjusted downward so that the carrier does not recover interest costs through both the service charge and an allowance under this paragraph.

1631.205-74 FEHBP losses on other contracts.

FAR 31.205-23 shall not be construed to prohibit the application of the normal "loss carry forward" principle that is fundamental to continuing insurance contracts that are based on experience rating.

1631.205-75 Selling costs.

(a) FAR 31.205-38 is modified to eliminate from allowable costs those costs related to sales promotion and the payment of sales commissions fees or salaries to employees or outside commercial or selling agencies for enrolling Federal subscribers in a particular FEHB plan.

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season health fairs and other similar activities sponsored by Government agencies (but see FAR 31.205-1 "Public relations and advertising costs", and Federal Personnel Manual Supplement 890-1, Subchapter S2-3(f) "Controlling contacts between employees and carriers").

1631.205-76 Trade, business, technical, and professional activity costs.

(a) FEHBP participating plans, carriers, and underwriters shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities (FAR 31.205-43) when the allocable costs of such participation to the FEHBP will exceed $1,000 annually and when the carrier or underwriter allocates more than 50% of the membership cost of a trade, business, technical, or professional organization to the FEHBP.

(b) When approval of costs for membership in an organization is required, the carrier or underwriter must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing care and services to FEHBP enrollees, and that the organization is not engaged in activities such as those cited in FAR 31.205-22 (lobbying costs) for which costs are not allowable.

1631.205-77 FEHBP start-up and other nonrecurring costs.

Precontract costs (FAR 31.205-32) shall be allowed only to the extent provided for by advance agreement in accordance with FAR 31.109.

1631.205-78 FEHBP printed material costs.

Unless OPM determines that it is in the best interest of the FEHBP to do otherwise, if a carrier orders printed material that is available from the Government Printing Office (GPO) under the "rider system" from another source, the allowable contract charges shall be the lesser of the amount actually paid or the cost that would have been incurred had the carrier ridden OPM's GPO order.

1631.205-79 Mandatory statutory reserves.

Charges for mandatory statutory reserves are not allowed unless provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the carrier, a pro rata share based upon FEHBP's contribution to the total carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201-5.

1631.205-80 Major subcontractor service charges.

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits, and payment or provision of actual health services, and/or assumption of insurance risk or underwriting, when costs are determined on the basis of actual costs incurred or experience rating, any amount that exceeds the allowable cost of the subcontract (whether entitled service charge, profit, fee, contribution to reserve, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the service charge negotiated between OPM and the Carrier.

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

Sec.

1632.170 Recurring premium payments to carriers.
1632.171 Clause—contracts without letter of credit payment arrangements.
1632.172 Clause—contracts with letter of credit payment arrangements.

Subpart 1632.6—Contract Debts

1632.607 Tax credit.
1632.617 Contract clause.

Subpart 1632.7—Contract Funding

1632.770 Contingency reserve payments.
1632.771 Non-commingling of FEHBP funds.
1632.772 Contract clause.

Subpart 1632.8—Assignment of Claims

1632.806-70 Contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

Subpart 1632.1—General

1632.170 Recurring premium payments to carriers.

The procedures for payment of premiums, contingency reserve, and interest distribution to FEHB Program carriers shall be those contained in 5 CFR 890.505.

[53 FR 51784, Dec. 24, 1988]

1632.171 Clause—contracts without letter of credit payment arrangements.

The clause at 1652.232-70 shall be inserted in all FEHBP contracts without letter of credit payment arrangements.

[53 FR 51784, Dec. 24, 1988]

1632.172 Clause—contracts with letter of credit payment arrangements.

The clause at 1652.232-71 shall be inserted in all FEHBP contracts with letter of credit payment arrangements.

[53 FR 51784, Dec. 24, 1988]

Subpart 1632.6—Contract Debts

1632.607 Tax credit.

FAR 32.607 has no practical application to FEHBP contracts. The statutory provisions at 5 U.S.C. 8906(c) and (d) authorize joint enrollee and Government contributions to the FEHBP Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, carriers may not offset debts to the Fund by a tax credit which is solely a Government obligation.

1632.617 Contract clause.

The clause at FAR 52.232-17 will be modified in FEHBP contracts based on established catalog or market price to exclude the words "net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)."

Subpart 1632.7—Contract Funding

1632.770 Contingency reserve payments.

(a) Payments from the contingency reserve shall be made in accordance with 5 CFR 890.503.

(b) A carrier for an FEHB plan may apply to OPM at any time for a payment from the contingency reserve that is in addition to those amounts, if any, paid under 5 CFR 890.503(c)(1) through (c)(4), if the carrier can show good cause, such as, unexpected adverse claims experience. OPM will decide whether to allow the request in whole or in part and will advise the carrier of its decision. However, OPM shall not unreasonably withhold approval for amounts requested that exceed the plan's preferred minimum balance for the contingency reserve.

1632.771 Non-commingling of FEHBP funds.

(a) This section applies to contracts based on cost analysis.

(b) Carrier or underwriter commingling of FEHBP funds with those from other sources makes it difficult to precisely determine FEHBP cash balances at any given time or to precisely determine investment income attributable to FEHBP invested assets.

(c) FEHBP funds shall be maintained separately from other cash and investments of the carrier or underwriter. Cash and investment balances reported on FEHBP Annual Accounting Statements must agree with the carrier's books and records.

(d) This requirement may be waived by the contracting officer in accordance with the clause at 1652.232-70 when adequate accounting and other controls are in effect. If the requirement is waived, the waiver will remain in effect until it is withdrawn by OPM. The waiver shall be withdrawn if OPM determines that the accounting controls are no longer adequate to properly account for FEHBP funds.

1632.772 Contract clause.

The clause at 1652.232-70 shall be included in all contracts that are based on cost analysis.

Subpart 1632.8—Assignment of Claims

1632.806-70 Contract clause.

The clause set forth in 1652.232-73 shall be inserted in all FEHBP contracts.

[55 FR 27415, July 2, 1990]

PART 1633—PROTESTS, DISPUTES, AND APPEALS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1633.070 Designation of the Board of Contract Appeals.

The Armed Services Board of Contract Appeals (ASBCA) serves as the

Board of Contract Appeals for the FEHBP. The rules of procedure followed in a dispute shall be those prescribed by the ASBCA.

[52 FR 16043, May 1, 1987]

PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1644.1—General

Sec.
1644.170 Policy for FEHBP subcontracting consent.

Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

Subpart 1644.1—General

1644.170 Policy for FEHBP subcontracting consent.

For all FEHBP contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the amount charged the FEHBP contract exceeds $100,000.

Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

The clause set forth at 1652.244-70 shall be inserted in all FEHBP contracts.

PART 1646—QUALITY ASSURANCE

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1646.301 Contractor inspection requirements.

The clause set forth at 1652-.246-70 shall be inserted in all FEHBP contracts.

[52 FR 16044, May 1, 1987]

PART 1649—TERMINATION OF CONTRACTS

Sec.
1649.002-70 Applicability of the FAR to FEHB acquisitions.

Subpart 1649.1—General Principles

1649.101-70 FEHBP renewal and withdrawal of approval clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16044, May 1, 1987, unless otherwise noted.

1649.002-70 Applicability of the FAR to FEHB acquisitions.

Termination of FEHBP contracts is controlled by 5 U.S.C. 8902(e) and 5 CFR 890.204. The procedures for settlement of contracts after they are terminated shall be those contained in FAR part 49.

Subpart 1649.1—General Principles

1649.101-70 FEHBP renewal and withdrawal of approval clause.

The clause in 1652.249-70 shall be inserted in all FEHBP contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1652—CONTRACT CLAUSES

1652.000 Applicable clauses.

Subpart 1652.2—Texts of FEHBP Clauses

1652.203-70 Misleading, deceptive, or unfair advertising.
1652.204-70 Contractor records retention.
1652.204-71 Coordination of Benefits.
1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.
1652.215-71 Investment Income.
1652.216-70 Accounting and price adjustment.
1652.216-71 Accounting and Allowable Cost.
1652.222-70 Notice of significant events.
1652.224-70 Confidentiality of Records.
1652.232-70 Payments—contracts without letter of credit payment arrangements.
1652.232-71 Payments—contracts with letter of credit payment arrangments.
1652.232-72 Non-commingling of FEHBP funds.
1652.232-73 Approval for the Assignment of Claims.
1652.244-70 Subcontracts.
1652.246-70 FEHB Inspection.
1652.249-70 Renewal and withdrawal of approval.

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the matrix.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16044, May 1, 1987, unless otherwise noted.

1652.000 Applicable clauses.

The clauses of Subpart 52.2 specified below shall be applicable to FEHBP acquisitions.

SECTION AND CLAUSE TITLE

52.202-1 Definitions (Apr. 1984).
52.203-1 Officials not to Benefit (Apr. 1984).
52.203-3 Gratuities (Apr. 1984).
52.203-5 Covenant Against Contingent Fees (Apr. 1984).
52.215-1 Examination of Records by Comptroller General (Apr. 1984).
52.215-2 Audit—Negotiation (Jan. 1987).
52.215-22 Price Reduction for Defective Cost or Pricing Data (Apr. 1984).
52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications (Apr. 1985).
52.215-24 Subcontractor Cost or Pricing Data (Apr. 1985).
52.215-25 Subcontractor Cost or Pricing Data—Modifications (Apr. 1985).
52.215-30 Facilities Capital Cost of Money (Apr. 1984).
52.215-31 Waiver of Facilities Capital Cost of Money (Apr. 1984).
52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (June 1985).
52.219-13 Utilization of Women-Owned Small Businesses (Aug. 1986).
52.220-3 Utilization of Labor Surplus Area Concerns (Apr. 1984).
52.222-3 Convict Labor (Apr. 1984).
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Mar. 1986).
52.222-26 Equal Opportunity (Apr. 1984).
52.222-28 Equal Opportunity Preaward Clearance of Subcontracts (Apr. 1984).
52.222-29 Notification of Visa Denial (Apr. 1984).
52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Apr. 1984).
52.222-36 Affirmative Action for Handicapped Workers (Apr. 1984).
52.223-2 Clean Air and Water (Apr. 1984).
52.229-3 Federal, State, and Local Taxes (Apr. 1984).
52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract) (Apr. 1984).
52.229-5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (Apr. 1984).
52.229-6 Taxes—Foreign Fixed-Price Contracts (Apr. 1984).
52.230-3 Cost Accounting Standards (Aug. 1986).
52.230-4 Administration of Cost Accounting Standards (Apr. 1984).
52.230-5 Disclosure and Consistency of Cost Accounting Practices (Aug. 1986).
52.230-6 Consistency in Cost Accounting Practices (Apr. 1984).
52.232-1; 1632.111 Payments (Jan. 1987).
52.232-8 Discounts for Prompt Payment (July 1985).
52.232-11 Extras (Apr. 1984).
52.232-17; 1632.617 Interest (Jan. 1987).
52.232-23 Assignment of Claims (Jan. 1986).
52.232-24 Prohibition of Assignment of Claims (Jan. 1986).
52.233-1 Disputes (Apr. 1984).
52.242-1 Notice of Intent to Disallow Costs (Apr. 1984).
52.243-1 Changes—Fixed Price—Alternate I (Apr. 1984).
52.244-5 Competition in Subcontracting (Apr. 1984).

52.245-2 Government Property (Fixed-Price Contracts) (Apr. 1984).

52.246-25 Limitation of Liability—Services (Apr. 1984).

52.247-63 Preference for U.S.-Flag Air Carriers (Apr. 1984).

52.251-1 Government Supply Sources (Apr. 1984).

52.252-2 Clauses Incorporated by Reference (Apr. 1984).

52.252-4 Alterations in Contract (Apr. 1984).

52.252-6 Authorized Deviations in Clauses (Apr. 1984).

Subpart 1652.2—Texts of FEHBP Clauses

1652.203-70 Misleading, deceptive, or unfair advertising.

As prescribed in 1603.703, the following clause shall be inserted in all FEHBP contracts:

MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (JAN 1991)

(a) The Carrier agrees that any advertising material, including that labeled promotional material, marketing material, or supplemental literature, shall be truthful and not misleading.

(b) Criteria to assess compliance with paragraph (a) of this clause are available in the FEHB Supplemental Literature Guidelines which are developed by OPM and should be used, along with the additional guidelines set forth in FEHBAR 1603.702, as the primary guide in preparing material; further guidance is provided in the NAIC "Rules Governing Advertising of Accident and Sickness Insurance With Interpretive Guidelines." Guidelines are periodically updated and provided to the Carrier by OPM.

(c) Failure to conform to paragraph (a) of this clause may result in a reduction in the service charge, if appropriate, and corrective action to protect the interest of Federal Members. Corrective action will be appropriate to the circumstances and may include, but is not limited to the following actions by OPM:

(1) Directing the Carrier to cease and desist distribution, publication, or broadcast of the material;

(2) Directing the Carrier to issue corrections at the Carrier's expense and in the same manner and media as the original material was made; and

(3) Directing the Carrier to provide, at the Carrier's expense, the correction in writing by certified mail to all enrollees of the Plan(s) that had been the subject of the original material.

(d) Egregious or repeated offenses may result in the following action by OPM:

(1) Suspending new enrollments in the Carrier's Plan(s);

(2) Providing Enrollees an opportunity to transfer to another plan; and

(3) Terminating the contract in accordance with Section 1.15, Renewal and Withdrawal of Approval.

(e) Prior to taking action as described in paragraphs (c) and (d) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(f) The Carrier shall incorporate this clause in subcontracts with its underwriter, if any, and other subcontractors directly involved in the preparation or distribution of such advertising material and shall substitute "Contractor" or other appropriate reference for the term "Carrier."

(End of Clause)

[55 FR 27415, July 2, 1990]

1652.204-70 Contractor records retention.

As prescribed in 1604.705, the following clause shall be inserted in all FEHBP contracts.

CONTRACTOR RECORDS RETENTION (JAN 1991)

Notwithstanding the provisions of section 5.7 (FAR 52.215-2(d)) "Audit-Negotiation" and the SF 1412, the Carrier will retain and make available all records applicable to a contract term that support the annual statement of operations and the rate submission for that contract term for a period of 5 years after the end of the contract term to which the records relate, except that individual enrollee and/or patient claim records shall be maintained for 3 years after the end of the contract term to which the claim records relate.

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27415, July 2, 1990]

1652.204-71 Coordination of Benefits.

As prescribed in 1604.7001, the following clause shall be inserted in all FEHBP contracts:

COORDINATION OF BENEFITS (JAN 1991)

(a) The Carrier shall coordinate the payment of benefits under this contract with the payment of benefits under Medicare, other group health benefits coverages, and the payment of medical and hospital costs under no-fault or other automobile insurance that pays benefits without regard to fault.

(b) The Carrier shall not pay benefits under this contract until it has determined whether it is the primary carrier or unless permitted to do so by the Contracting Officer.

(c) In coordinating benefits between plans, the Carrier shall follow the order of precedence established by the NAIC Model Guidelines for Coordination of Benefits (COB) as specified by OPM.

(d) Where (1) the Carrier makes payments under this contract which are subject to COB provisions; (2) the payments are erroneous, not in accordance with the terms of the contract, or in excess of the limitations applicable under this contract; and (3) the Carrier is unable to recover such COB overpayments from the Member or the providers of services or supplies, the Contracting Officer may allow such amounts to be charged to the contract; the Carrier must be prepared to demonstrate that it has made a diligent effort to recover such COB overpayments.

(e) COB savings shall be reported by experience rated carriers each year along with the Carrier's annual accounting statement in a form specified by OPM.

(f) Changes in the order of precedence established by the NAIC Model Guidelines implemented after January 1 of any given year shall be required no earlier than the beginning of the following contract term.

(End of Clause)

[55 FR 27415, July 2, 1990]

1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

As prescribed in 1615.804-72, the following clause shall be inserted in contracts based on established market price:

RATE REDUCTION FOR DEFECTIVE PRICING OR DEFECTIVE COST OR PRICING DATA (JAN 1990)

If any rate established in connection with this contract was increased because (1) the Carrier furnished cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Pricing for Community Rated Plans (FEHBAR 1615.804-70); (2) the Carrier furnished pricing data that were not accurate as represented on the Claim for Exemption from Submission of Certified Cost or Pricing Data (SF 1412); (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBAR 1602.170-11) as certified in the Certificate of Accurate Pricing for Community Rated Plans or represented in the Supplemental Representation for SF 1412; or (4) the Carrier furnished data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(End of Clause)

[55 FR 27415, July 2, 1990]

1652.215-71 Investment Income.

As prescribed in 1615.805-71, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

INVESTMENT INCOME (JAN 1991)

(a) The Carrier shall invest and reinvest all FEHB funds on hand that are in excess of the funds needed to promptly discharge the obligations incurred under this contract. The Carrier shall seek to maximize investment income with prudent consideration to the safety and liquidity of investments.

(b) All investment income earned on FEHB funds shall be credited to the Special Reserve on behalf of the FEHBP.

(c) When the Contracting Officer concludes that the Carrier failed to comply with paragraph (a) or (b) of this clause, the Carrier shall credit the Special Reserve with investment income that would have been earned, at the rate(s) specified in paragraph (f) of this clause, had it not been for the Carrier's noncompliance. "Failed to comply with paragraph (a) or (b)" means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place excess funds, including subscription income and payments from OPM not needed to discharge promptly the obligations incurred under the contract, refunds, credits, payments, deposits, investment income earned, uncashed checks, or other amounts owed the Special Reserve, in income producing investments and accounts.

(d) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(e) Investment income lost as a result of failure to credit income due the contract or failure to place excess funds in income producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause. Thereafter, the rate shall be the rate applicable for each 6-month period as fixed by the Secretary until the amount is paid.

(g) The Carrier shall incorporate this clause into agreements with underwriters of the Carrier's FEHB plan and shall substitute "underwriter" or other appropriate reference for the term "Carrier."

(End of Clause)

[55 FR 27416, July 2, 1990]

1652.216-70 Accounting and price adjustment.

As prescribed in 1616.270, the following clause shall be inserted in all FEHBP contracts based on established market price:

ACCOUNTING AND PRICE ADJUSTMENT (JAN 1990)

(a) *Annual Accounting Statement.* The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) *Adjustment.* (1) This contract is community rated as defined in FEHBAR § 1602.170-2.

(2) The subscription rates agreed to in this contract are derived from the market price, which is a per member per month (PMPM) capitation or its equivalent that applies to a combination of subscriber groups. The market price established in this contract may be an estimate of the Carrier's actual market price that will be in effect during the contract period.

(3) If, for the contract period, the Carrier establishes an actual market price higher than the market price established for this contract and the higher market price is actually paid by the similarly sized subscriber groups (see FEHBAR 1602.170-11), the Carrier may include an adjustment to the next contract period's FEHBP rates to recover the difference between the estimated market price and the actual market price.

(4) If for the contract period, the Carrier establishes an actual market price lower than the market price established for this contract and the lower market price is actually paid by similarly sized subscriber groups, the Carrier shall reimburse the Fund, for example, by reducing the next contract period's FEHB rates to reflect the difference between the estimated market price and the actual market price.

(5) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract period on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(6) In the event this contract is not renewed, neither the Government nor the Carrier shall be entitled to any adjustment or claim for the difference between the estimated and the actual market price, PMPM capitation or revenue requirement.

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27416, July 2, 1990]

1652.216-71 Accounting and Allowable Cost.

As prescribed in 1616.271, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

ACCOUNTING AND ALLOWABLE COST (JAN 1991)

(a) *Annual Accounting Statement.* (1) The Carrier, not later than the date specified by the contract, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM and shall include, among other things, a Balance Sheet and a Summary Statement of FEHBP Financial Operations. The Summary Statement of FEHBP Financial Operations shall include the following items for each option provided by the contract:

(i) Subscription income received and accrued (including amounts received from the Contingency Reserve);

(ii) Health benefits charges paid and accrued;

(iii) Administrative expenses and other charges paid and accrued;

(iv) Income on investments;

(v) Other adjustments;

(vi) Sum of items (i) minus (ii) minus (iii) plus (iv) plus or minus (v).

(2) The Carrier shall have its most recent financial statement and that of its underwriter, if any, audited by an accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The report shall be submitted to OPM not later than 180 days after the end of the contract period.

(3) Based on the results of either the independent audit or a Government audit, the Carrier's annual accounting statements may be (i) adjusted by amounts found not to constitute allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) The allowable costs chargeable to the contract for a contract period shall be the actual, necessary and reasonable amounts incurred with proper justification and accounting support, determined in accordance with the terms of this contract, subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 1631.2 of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, contract costs shall be classified in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers, less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all allocable, allowable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (except that premium taxes are considered "other charges"), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* The Carrier is required to invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses as a result of investing the FEHBP funds. The direct or allocable indirect expenses incurred in managing the investment program, such as consultant or management fees are chargeable against the investment income earned.

(iv) *Other charges*—(A) *Mandatory statutory reserves.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, a pro rata share based upon FEHBP's contribution to the total Carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201-5.

(B) *Premium taxes.* When the term "premium taxes" is used in the contract without further definition or explanation, it means a tax imposed by State or local statutes upon the Carrier's gross or net premiums received.

(c) *Certification of Accounting Statement Accuracy.* (1) The Carrier shall certify the annual accounting statement in the form set forth in paragraph (c)(3) of this clause. The certificate shall be signed by the chief executive officer and the chief financial officer of the Carrier.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

Certification of Accounting Statement Accuracy

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this contract period in conformity with those guidelines;

2. The costs included in the statement are allowable and allocable in accordance with the terms of the contract and with the cost

principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement;

4. If applicable, the letter of credit account was managed in accordance with 31 CFR part 205, 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name: ______________________

____

Name of Chief Executive Officer
(Type or Print)

____

Name of Chief Financial Officer
(Type or Print)

____

Signature of Chief Executive Officer

____

Signature of Chief Financial Officer

____

Date Signed

____

Date Signed

____

Underwriter: ______________________

Name and Title of Responsible Corporate Official (Type or Print): ______________

Signature of Responsible Corporate Official:

____

Date Signed: ______________________

(End of Certificate)

(End of Clause)

[55 FR 27416, July 2, 1990]

1652.222-70 Notice of significant events.

As prescribed in 1622.103-70, the following clause shall be inserted in all FEHBP contracts.

NOTICE OF SIGNIFICANT EVENTS (JAN 1991)

(a) The Carrier agrees to notify OPM of any Significant Event within ten (10) working days after the Carrier becomes aware of it. As used in this section, a Significant Event is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the Carrier's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of major assets;

(2) Loss of 15% or more of the Carrier's overall membership;

(3) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Carrier's obligations under this contract;

(4) Addition or termination of provider agreements;

(5) Any changes in underwriters, reinsurers, or participating plans;

(6) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(7) The withdrawal of, or notice of intent to withdraw, State licensing, HHS qualification, or any other status under Federal or State law;

(8) Default on a loan or other financial obligation;

(9) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Carrier's facilities or facilities used by the Carrier in the performance of the contract;

(10) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Carrier's participation in the Federal Employees Health Benefits Program; or

(11) Any significant changes in policies and procedures or interpretations of the contract or brochure which would affect the benefits available under the contract or the costs charged to the contract.

(12) Any fraud, embezzlement or misappropriation of FEHB funds; or

(13) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Carrier to provide an opinion on its annual financial statements.

(b) Upon learning of a Significant Event OPM may institute action, in proportion to the seriousness of the event, to protect the interest of Members, including, but not limited to—

(1) Directing the Carrier to take corrective action;

(2) Suspending new enrollments under this contract;

(3) Advising Enrollees of the Significant Event and providing them an opportunity to transfer to another plan;

(4) Withholding payment of subscription income or restricting access to the Carrier's Letter of Credit account.

(5) Terminating the enrollment of those enrollees who, in the judgment of OPM, would be adversely affected by the Significant Event; or

(6) Terminating this contract pursuant to section 1.15, renewal and withdrawal of approval.

(c) Prior to taking action as described in paragraph (b) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(d) The Carrier shall insert this clause in any subcontract or subcontract modification if both the amount of the subcontract or modification charged to the FEHBP (or, in the case of a community rated carrier, applicable to the FEHBP) exceeds $100,000 and the amount of the subcontract or modification to be charged to the FEHBP (or, in the case of a community rated carrier, applicable to the FEHBP) exceeds 25 percent of the total cost of the subcontract or modification. If the Carrier is a CMP, it shall also insert this clause in all provider agreements over $25,000. If the Carrier is not a CMP, it shall also insert this clause in the contract with its underwriter, if any. The Carrier shall substitute "Contractor" or other appropriate reference for the term "Carrier."

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990]

1652.224-70 Confidentiality of records.

As prescribed in 1624.104, the following clause shall be inserted in all FEHBP contracts:

CONFIDENTIALITY OF RECORDS (JAN 1991)

(a) The Carrier shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the FEDERAL REGISTER as a part of OPM's notice of systems of records.

(b) The Carrier shall also hold all medical records, and information relating thereto, of Federal subscribers and family members confidential except as follows:

(1) As may be reasonably necessary for the administration of this contract;

(2) As authorized by the patient or his or her guardian;

(3) As disclosure is necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions;

(4) As necessary to audit the contract;

(5) As necessary to carry out the coordination of benefits provisions of this contract; and

(6) For bona fide medical research or educational purposes. Release of information for medical research or educational purposes shall be limited to aggregated information of a statistical nature that does not identify any individual by name, social security number, or any other identifier unique to an individual.

(c) If the carrier uses medical records for the administration of the contract, or for bona fide medical research or educational purposes, it shall so state in the plan's brochure.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990]

1652.232-70 Payments—contracts without letter of credit payment arrangements.

As prescribed in 1632.171, the following clause shall be inserted in all FEHBP contracts without letter of credit payment arrangements:

PAYMENTS

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be due and payable not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(End of Clause)

[53 FR 51784, Dec. 23, 1988]

1652.232-71 Payments—contracts with letter of credit payment arrangements.

As prescribed in 1632.172, the following clause shall be inserted in all FEHBP contracts with letter of credit payment arrangements:

PAYMENTS

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the Plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be made available for carrier and/or underwriter drawdown not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special nonrecurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(End of Clause)

[53 FR 51784, Dec. 23, 1988]

1652.232-72 Non-commingling of FEHBP funds.

As prescribed in 1632.772, the following clause shall be inserted in all contracts based on cost analysis.

NON-COMMINGLING OF FUNDS (JAN 1991)

(a) The Carrier and/or its underwriter shall keep all FEHBP funds for this contract (cash and investments) physically separate from funds obtained from other sources. Accounting for such FEHBP funds shall not be based on allocations or other sharing mechanisms and shall agree with the Carrier's accounting records.

(b) In certain instances the physical separation of FEHBP funds may not be practical or desirable. In such cases, the Carrier may request a waiver from this requirement from the Contracting Officer. The waiver shall be requested in advance and the Carrier shall demonstrate that accounting techniques have been established that will clearly measure FEHBP cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(c) The Carrier shall incorporate this clause in all subcontracts that exceed $25,000 and shall substitute "contractor" or other appropriate reference for "Carrier and/or its underwriter."

(End of Clause)

[52 FR 16044, May 1, 1987. Redesignated at 53 FR 51784, Dec. 23, 1988, and amended at 55 FR 27418, July 2, 1990]

1652.232-73 Approval for the Assignment of Claims.

As prescribed in 1632.806-70, the following clause shall be inserted in all FEHBP contracts:

APPROVAL FOR ASSIGNMENT OF CLAIMS (JAN 1991)

(a) Notwithstanding the provisions of section 5.35, (FAR 52.232-23) Assignment of Claims, the Carrier shall not make any assignment under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of Clause)

[55 FR 27418, July 2, 1990]

1652.244-70 Subcontracts.

As prescribed by 1644.270, the following clause shall be inserted in all FEHBP contracts:

SUBCONTRACTS (JAN 1991)

(a) The Carrier shall notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, if both the amount of the subcontract or modification charged to the FEHB Program (in the case of a community rated carrier, applicable to the FEHB Program) exceeds $100,000 and is 25 percent of the total cost of the subcontract.

(b) The advance notification required by paragraph (a) of this clause shall include the information specified below:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Carrier's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Carrier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Carrier and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Carrier's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Carrier shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraphs (a), (b), and (c) of this clause where the Carrier and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiation of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Officer to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Carrier of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d). Any profit or fee payable under a subcontract shall be in accordance with the provision of subpart 3.7, Service charge.

(g) The Carrier shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Carrier by any subcontractor or vendor that, in the opinion of the Carrier, may result in litigation related in any way to this contract with respect to which the Carrier may be entitled to reimbursement from the Government.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990]

1652.246-70 FEHB Inspection.

As prescribed in 1646.301, the following clause shall be inserted in all FEHBP contracts:

FEHB INSPECTION (JAN 1991)

(a) The Government or its agent has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government or its agent performs inspection or evaluation on the premises of the Carrier or a subcontractor, the Carrier shall furnish and require the subcontractor to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(b) The Carrier shall insert this clause in all subcontracts for underwriting and administrative services and shall substitute "Contractor" or other appropriate reference for the term "Carrier."

(End of Clause)

[55 FR 27418, July 2, 1990]

1652.249-70 Renewal and withdrawal of approval.

As prescribed in 1649.101-70, the following clause shall be inserted in all FEHBP contracts:

RENEWAL AND WITHDRAWAL OF APPROVAL (JAN 1991)

(a) The contract renews automatically for a term of one (1) year each January first, unless written notice of non-renewal is given either by OPM or the Carrier not less than 60 calendar days before the renewal date, or unless modified by mutual agreement.

(b) This contract also may be terminated at other times by order of OPM pursuant to 5 U.S.C. 8902(e). After OPM notifies the Carrier of its intent to terminate the contract, OPM may take action as it deems necessary to protect the interests of members, including but not limited to—

(1) Suspending new enrollments under the contract;

(2) Advising enrollees of the asserted deficiencies; and

(3) Providing enrollees an opportunity to transfer to another Plan.

(c) OPM may, after proper notice, terminate the contract at the end of the contract term if it finds that the Carrier did not have at least 300 enrollees enrolled in its plan at any time during the two preceding contract terms.

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at FR 27418, July 2, 1990]

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the matrix.

(a) The matrix in this section lists the FAR and FEHBAR clauses to be used with contracts based on cost analysis and contracts based on established catalog or market price. Carriers shall submit initial applications and requests for renewals on the basis that the new contract or contract renewal will include the clauses indicated.

(b) Certain contract clauses are mandatory for FEHBP contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or FEHBAR. An "M" in the "Use Status" column indicates that the clause is mandatory. An "A" indicates that the clause is to be used only when the applicable conditions are met.

(c) Clauses are incorporated in the contract either in full text or by reference. If the full text is to be used, the matrix indicates a "T". If the clause is incorporated by reference, the matrix indicates an "R".

FEHBP CLAUSE MATRIX

Clause no.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.202-1	FAR 2.2	Definitions	M	T	T
FAR 52.203-1	FAR 3.102-2	Officials Not to Benefit	M	T	T
FAR 52.203-3	FAR 3.202	Gratuities	M	T	T
FAR 52.203-5	FAR 3.404(c)	Covenant Against Contingent Fees.	M	T	T
FAR 52.203-7	FAR 3.502-3	Anti-Kickback Procedures	M	T	T
1652.203-70	1603-703	Misleading, Deceptive, or Unfair Advertising.	M	T	T
1652.204-70	1604.705	Contractor Records Retention.	M	T	T
1652.204-71	1604.7001	Coordination of Benefits	M	T	T
FAR 52.215-1	FAR 15.106-1(b)	Examination of Records by Comptroller General.	M	T	T
FAR 52.215-2	FAR 15.106-2(b)	Audit-Negotiation	M	T	T
FAR 52.215-22	FAR 15.804-8(a)	Price Reduction for Defective Cost or Pricing Data.	M	T	
FAR 52.215-23	FAR 15.804-8(b)	Price Reduction for Defective Cost or Pricing Data-Modifications.	M		T
FAR 52.215-24	FAR 15.804-8(c)	Subcontractor Cost or Pricing Data.	M	T	
FAR 52.215-25	FAR 15.804-8(d)	Subcontractor Cost or Pricing Data-Modifications.	M		T
FAR 52.215-30	FAR 15.904	Facilities Capital Cost of Money.	M	T	

FEHBP CLAUSE MATRIX—Continued

Clause no.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.215-31	FAR 15.904	Waiver of Facilities Capital Cost of Money.	A	T	
1652.215-70	1615.804-72	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M		T
1652.215-71	1615.805-71	Investment Income	M	T	
1652.216-70	1616.270	Accounting and Price Adjustment.	M		T
1652.216-71	1616.271	Accounting and Allowable Cost.	M	T	
FAR 52.219-8	FAR 19.708(a)	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.	M	T	T
FAR 52.219-13	FAR 19.902	Utilization of Women-Owned Small Businesses.	M	T	T
FAR 52.220-3	FAR 20.302(a)	Utilization of Labor Surplus Area Concerns.	M	T	T
FAR 52.222-3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222-4	FAR 22.305(a)	Contract Work Hours and Safety Standards Act-Overtime Compensation-General.	M	T	T
FAR 52.222-26	FAR 22.810(e)	Equal Opportunity	M	T	T
FAR 52.222-28	FAR 22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts.	M	T	T
FAR 52.222-29	FAR 22.810(h)	Notification of Visa Denial	A	T	T
FAR 52.222-35	FAR 22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans.	M	T	T
FAR 52.222-36	FAR 22.1408(a)	Affirmative Action for Handicapped Workers.	M	T	T
1652.222-70	1622.103-70	Notice of Significant Events.	M	T	T
FAR 52.223-2	FAR 23.105(b)	Clean Air and Water	A	T	T
FAR 52.223-6	FAR 23.505(c)	Drug-Free Workplace	A	T	T
1652.224-70	1624.104	Confidentiality of Records	M	T	T
FAR 52.229-3	FAR 29.401-3	Federal, State and Local Taxes.	M		T
FAR 52.229-4	FAR 29.401-4	Federal, State and Local Taxes (Noncompetitive Contract).	M	T	
FAR 52.229-5	FAR 29.401-5	Taxes-Contracts Performed in U.S. Possessions or Puerto Rico.	A	T	T
FAR 52.229-6	FAR 29.402-1(a)	Taxes-Foreign Fixed Price Contracts.	A	T	T
FAR 52.230-3	FAR 30.201-4(a)	Cost Accounting Standards	A	T	T
FAR 52.230-4	FAR 30.201-4(b)(1)	Administration of Cost Accounting Standards.	A	T	T
FAR 52.230-5	FAR 30.201-4(c)(1)	Disclosure and Consistency of Cost Accounting Practices.	A	T	T
FAR 52.232-8	FAR 32.111(c)(1)	Discounts for Prompt Payment.	M	T	T
FAR 52.232-17	FAR 32.617(a) Modification: 1632.617.	Interest	M		T
FAR 52.232-23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
1652.232-70	1632.171	Payments—contracts without letter of credit payment arrangements.	A	T	T
1652.232-71	1632.172	Payments—contracts with letter of credit payment arrangements.	A	T	T

FEHBP CLAUSE MATRIX—Continued

Clause no.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
1652.232-72	1632.772	Non-Commingling of FEHBP Funds.	M	T	
1652.232-73	1632.806-70	Approval for Assignment of Claims.	M	T	T
FAR 52.233-1	FAR 33.214	Disputes	M	T	T
FAR 52.242-1	FAR 42.802	Notice of Intent to Disallow Costs.	M	T	
FAR 52.243-1	FAR 43.205(a)(1)	Changes—Fixed Price— Alternate I.	M	T	T
1652.244-70	1644.270	Subcontracts	M	T	T
FAR 52.244-5	FAR 44.204(e)	Competition in Subcontracting.	M	T	T
FAR 52.245-2	FAR 45.106(b)(1)	Government Property (Fixed-Price Contracts).	M	T	T
FAR 52.246-25	FAR 46.805(a)(4)	Limitation of Liability-Services.	M	T	
1652.246-70	1646.301	FEHBP Inspection	M	T	T
FAR 52.247-63	FAR 47.405	Preference for U.S.-Flag Air Carriers.	M	T	T
1652.249-70	1649.101-70	Renewal and Withdrawal of Approval.	M	T	T
FAR 52.251-1	FAR 51.107	Government Supply Sources.	A	T	
FAR 52.252-2	FAR 52.107(b)	Clauses Incorporated by Reference.	M	T	T
FAR 52.252-4	FAR 52.107(d)	Alterations in Contract	M	T	T
FAR 52.252-6	FAR 52.107(f)	Authorized Deviations in Clauses.	M	T	T

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990]

PART 1653—FORMS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1653.000 FEHBP forms.

The following forms specified in FAR subparts 53.2 and 53.3 are applicable to FEHBP acquisitions:

Part 53.2	Part 53.3	Form title
53.201-1	53.301-1402	SF 1402-Certificate of Appointment.
53.203	53.301-119	SF 119—Statement of Contingent or Other Fees.
53.204-2(a)	53.301-279	SF 279 FPDS—Individual Contract Action Repor (over $10,000).
53.204-2(b)	53.301-281	SF 281 FPDS—Summar of Contract Actions of $10,000 or less.
53.215-2(b)	53.301-1412	SF 1412—Claim for Exemption from Submission of Certific Cost or Pricing Data
53.229	53.301-1094	SF 1094—U.S. Tax Exemption Certificate
53.229	53.301-1094A	SF 1094A—Tax Exemption Certificate Accountability Record

[52 FR 16048, May 1, 1987]

CHAPTER 17—OFFICE OF PERSONNEL MANAGEMENT

(Parts 1700 to 1799)

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PART 1733—PROTESTS, DISPUTES, AND APPEALS

Subpart 1733.2—Disputes and Appeals

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1733 209 Suspected fraudulent claims.
1733.211 Contracting officer's decision.
1733.212 Contracting officer's duties upon appeal.
1733.214 Contract clause.

Authority: 40 U.S.C. 486(c); 48 CFR 1.301.

Source: 51 FR 44296, Dec. 9, 1986, unless otherwise noted.

Subpart 1733.2—Disputes and Appeals

1733.203 Applicability.

(a) The Office of Personnel Management's (OPM) procurement executive shall make the determination prescribed under FAR 33.203(b).

(b) Requests for determinations under paragraph (a) of this section shall be submitted by OPM's contracting officer through OPM's head of the contracting activity to the procurement executive for further action.

1733.203-70 Designation of the Interior Board of Contract Appeals to decide OPM appeals.

(a) The Interior Board of Contract Appeals (IBCA) has been designated by the Director of OPM to consider and determine appeals from decisions of a contracting officer arising under a contract or relating to a contract made by OPM. This delegation governs disputes between OPM and its prime contractors and does not encompass any claim made by a third party beneficiary of, or by a subscriber to, a Federal employee insurance program.

(b) The address of IBCA is 4015 Wilson Boulevard, Arlington, VA 22203.

(c) IBCA rules of procedure can be found in 43 CFR part 4.

1733.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter through the head of the contracting activity to OPM's Offices of the Inspector General and the General Counsel.

1733.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) shall include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Interior Board of Contract Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, and its procedures under 43 CFR part 4. The IBCA optional small claims (expedited) procedures and accelerated procedures under 43 CFR 4.113 shall also be referenced as required by the FAR.

1733.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to IBCA by certified mail within 5 days of receipt. OPM's Office of the General Counsel and the Department of the Interior's (DOI) Office of the Solicitor shall also be notified of the appeal by the contracting officer. 43 CFR 4.103.

(b) The contracting officer shall prepare and transmit the documentation and information required by 43 CFR 4.104 in the form of an appeal file to IBCA, OPM's Office of the General Counsel, DOI's Office of the Solicitor, and appellant or appellant's counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by IBCA.

1733.214 Contract clause.

The Disputes clause contained in FAR 52.233-1 shall be used with its Alternate I in all OPM solicitations and contracts.

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28188, July 5, 1989, unless otherwise noted.

1801.000 Scope of part.

This part sets forth basic policies and general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation (FAR) Supplement including purpose, authority, applicability, issuance, arrangement, numbering, dissemination, implementation, supplementation, maintenance, administration, and deviation.

Subpart 1801.1—Purpose, Authority, Issuance

1801.101 Purpose.

The NASA FAR Supplement establishes agencywide uniform policies and procedures that implement and supplement the FAR.

1801.102 Authority.

Under the following authorities, the Administrator has delegated to the Assistant Administrator for Procurement authority to prepare, issue, and maintain the NASA FAR Supplement:

(a) The National Aeronautics and Space Act of 1958, as amended (Pub. L. 85-568; 42 U.S.C. 2451 *et seq.*).

(b) 10 U.S.C. 137.

(c) Other statutory authority.

(d) FAR subpart 1.3.

1801.103 Applicability.

The NASA FAR Supplement applies to all acquisitions as defined in FAR part 2 except those expressly excluded by the FAR or this regulation.

1801.104 Issuance.

1801.104-1 Publication and code arrangement.

(a) The NASA FAR Supplement is published in—

(1) The daily issue of the FEDERAL REGISTER;

(2) Cumulated form in the Code of Federal Regulations (CFR); and

(3) A separate loose-leaf edition adaptable for either interleaving with the FAR or filing separately.

(b) The NASA FAR Supplement is issued as chapter 18 of title 48, CFR, and it parallels the FAR in format, arrangement, and numbering system. Thus, a formal citation to this paragraph would appear as 48 CFR 1801.104-1(b).

1801.104-2 Arrangement of regulations.

(a) *General.* The NASA FAR Supplement conforms to the arrangement and numbering system prescribed by FAR 1.104. The numbering illustrations at FAR 1.104-2(b) apply to the NASA FAR Supplement; users are reminded that in the loose-leaf edition of the supplement, NASA's assigned CFR chapter number 18 appears to the left of the part number, separated by a hyphen (e.g., 1815.402-1). However, in 48 CFR chapter 18 the hyphen does not appear; therefore the first four digits preceding the point refer to the CFR part number.

(b) *Numbering.* (1) All NASA FAR Supplement coverage that supplements, as opposed to implementing, the FAR uses part, subpart, section, and subsection numbers 70 through 89 (see 1801.303-70):

(i) Part 1870 is the first part number NASA can use for adding coverage that supplements the FAR; i.e., there is no appropriate subject heading within the 53 parts of the FAR under which the coverage could be located.

(ii) Subpart 1815.70 is the first subpart number NASA can use to supplement FAR part 15.

(iii) Section 1815.470 is the first section number NASA can use to supplement FAR subpart 15.4.

(iv) Subsection 1815.402-70 is the first subsection number NASA can use to supplement FAR section 15.402.

(v) Subsection 1815.402-170 is the first subsection number NASA can use to supplement FAR subsection 15.402-1.

(2) All NASA FAR Supplement coverage other than that identified with a 70 or higher number, as described in subparagraph (b)(1) of this section, implements the FAR and bears the identical number and title of the FAR segment being implemented down to the subsection level; e.g., 1815.402-1 implements FAR 15.402-1. Below the subsection level, NASA FAR Supplement alphanumerics do not correlate with FAR alphanumerics.

(c) *References and citations.* (1) Unless otherwise stated, cross references are to parts or subdivisions of this regulation.

(2) This regulation may be referred to as the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement, the NASA FAR Supplement, or, for the purpose of brevity, the NFS.

(3) A NFS "version" is the basic NFS with all NFSD change pages filed up to and including the NFSD number that corresponds to the "version" number. For example, for the 1989 edition of the NFS, Version 89.3 consists of pages from NFSDs 89-0 (basic NFS), with change pages filed from NFSDs 89-1, 89-2, and 89-3.

(4) Citations are assumed to mean the "current NFS"; however, if reference to other than the current document is intended, use of the identifying version number appearing on the cover is advisable.

(d) *Provisions and clauses.* See FAR subpart 52.1 and subpart 1852.1 of this regulation for information regarding the numbering and dating of provisions and clauses.

1801.104-3 Copies.

Copies of the NASA FAR Supplement in Federal Register, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402.

1801.104-370 Dissemination of this regulation, revisions, and Procurement Notices.

(a) The NASA FAR Supplement, NASA FAR Supplement Directives (NFSDs), and Procurement Notices (PNs) (see 1801.270-2) are distributed directly to NASA Headquarters and to installation distribution points. The number of copies distributed is determined by the requirements furnished by each Headquarters office and NASA field installation to the Office of Procurement, NASA Headquarters (Code HP). Material that revises this regulation is published in the Federal Register as required by statute.

(b) Heads of field installations shall ensure that copies of the NASA FAR Supplement, NFSDs, and PNs are promptly distributed to all interested activities and individuals within their installation. Code HP is responsible for distribution within Headquarters and for monitoring bulk distribution to installations.

(c) Subscriptions to the NASA FAR Supplement, including NFSDs, may be purchased by private concerns and individuals from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

1801.105 OMB approval under the Paperwork Reduction Act.

(a) NASA FAR Supplement requirements. The following OMB control numbers apply:

NASA FAR Supplement Segment	OMB Control Number
1812	2700-0056
1823	2700-0051
1827	2700-0052
1832	2700-0055
1843	2700-0054
NF 533	2700-0003
NF 667	2700-0004
NF 1018	2700-0017

(b) Solicitations and contracts. Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (a) of this section, yet require information collection or recordkeeping. OMB control number 2700-0042 applies to these requirements. This OMB control number shall be displayed in the upper right hand corner of the cover page of each solicitation/contract. Overprinting is authorized by 1853.104.

Subpart 1801.2—Administration

1801.270 Amendment of regulation.

This Regulation is amended as needed to set forth policies and procedures intended to reduce contract preparation time, simplify and standardize contract forms, otherwise improve the contracting process, and reflect changes in statutes, Executive orders, the FAR, and other mandatory policies. Acquisition personnel are encouraged to make informal suggestions, based on operating experience, for improving and simplifying this Regulation and the procedures set forth in it. Such comments, including correction of errors, should be directed to the Procurement Policy Division (Code HP) or to a Code HP analyst responsible for the applicable subject matter. Formal recommendations for changes are governed by 1801.271.

[54 FR 53622, Dec. 29, 1989]

1801.270-1 Revisions.

This Regulation is amended by issuing NFSDs containing loose-leaf replacement pages revising various segments of it (also see 1801.270-2). Each replacement page bears the NFSD number and page number at the top. A vertical bar at the side of a line indicates that a change has been made within that line.

1801.270-2 Procurement notices.

(a) This regulation is amended by issuing Procurement Notices (PNs) when—

(1) It is necessary or advisable to promulgate as rapidly as possible selected material revising this regula-

tion, in a general or narrative manner, in advance of a specific page-replacement-type revision to this regulation; or

(2) The policy and/or procedure is expected to be effective for less than a year.

(b) Unless otherwise indicated, each PN item remains in effect until the effective date of the subsequent NFSD incorporating the item or until specifically cancelled.

(c) Material unsuitable for insertion in this regulation shall be promulgated by means other than PNs.

1801.270-3 Effective date.

(a) NFSD or PN statements to the effect that the material is effective upon receipt or on a specified date or that Directive or Notice changes are to be used upon receipt mean that any new or revised clauses or forms included in the Directive or Notice shall be included in solicitations issued thereafter, unless a different meaning is expressed in the Directive or Notice.

(b) Compliance with a revision to this regulation shall be in accordance with the NFSD or PN containing the revision. Procurements initiated after receipt of new or revised clauses should, to the maximum practicable extent, include such clauses.

(c) Unless otherwise stated, solicitations that have been issued and bilateral agreements for which negotiations have been completed before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the procurement action.

1801.270-4 Numbering.

NFSDs and PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NASA FAR Supplement.

1801.271 NASA procedures for FAR and NFS changes.

(a) *Responsibilities.* (1) NASA is represented on the Defense Acquisition Regulatory Council (DARC) by a policy member from the Procurement Policy Division (Code HP) and a legal member from the Office of General Counsel (Code GK). NASA staff members are also assigned to standing and ad hoc DARC committees in their areas of expertise. The DARC policies and procedures for initiating and reviewing FAR changes shall be followed by the assigned individuals. However, any NASA element or individual may suggest a FAR revision.

(2) The Procurement Policy Division (Code HP) is responsible for the receipt and formal processing of changes to the NFS. A Code HP procurement analyst—a subject matter specialist—is assigned to and responsible for ensuring all necessary actions are taken. It is advisable to contact the appropriate Code HP analyst (see the Procurement Information Circular entitled "Headquarters Points of Contact for Policy and Operational Information") to determine if a similar regulatory change is already underway or for further advice as to the simplest means of preparing a formal request.

(b) *Documentation.* (1) Formal requests for changes to the FAR or the NFS must be written and contain, at a minimum:

(i) A concise description of the problem the suggested revision is designed to cure or ameliorate,

(ii) The revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language,

(iii) The consequences of making no change and the benefits to be expected from a change, and

(iv) Any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes shall be sent to the Assistant Administrator for Procurement (Code HP). Requests from headquarters offices involving the NFS should originate at the division level or higher, while installation requests must be signed at the procurement officer or higher level.

[54 FR 53622, Dec. 29, 1989]

1801.272 Procurement Information Circulars.

The Procurement Information Circular (PIC) shall be used for broad internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. While material contained in PICs is non-regulatory and will not be published in the Code of Federal Regulations (CFR), it may be mandatory or be of general interest or importance to its recipients. The PIC is also the preferred mechanism for broadly announcing pending regulatory changes; for providing interim guidance regarding forthcoming regulatory changes; for giving advice; and for providing broadly applicable, but short-lived, procedural information to the NASA procurement community.

[54 FR 53622, Dec. 29, 1989]

1801.272-1 Responsibility.

The Procurement Policy Division (Code HP) is responsible for establishing necessary operational guidelines, preparing, coordinating, issuing, and distributing PICs on behalf of Code H or other requesting NASA elements.

[54 FR 53622, Dec. 29, 1989]

1801.272-2 Format and distribution.

PICs shall be as brief as possible; however, pertinent documents may be included as enclosures, provided they are of reasonable length. PICs shall be numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year. Distribution conforms to 1801.104-370(a) and (b).

[54 FR 53622, Dec. 29, 1989]

1801.272-3 Expiration.

PICs are intended to relate to matters of current interest. To ensure periodic review, PICs normally will automatically expire on December 31 of the year of issuance. Code HP will contact the originating office regarding revalidation before the expiration date.

[54 FR 53622, Dec. 29, 1989]

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy.

The following shall be included in the NASA FAR Supplement:

(a) All agency-wide policies and procedures that govern the contracting process or that control contracting relationships, and

(b) All procurement policies, regulations, procedures, and forms requiring publication for public comment in accordance with Pub. L. 98-557. This statute requires that any procurement policy, regulation, procedure, or form (including amendments thereto) relating to the expenditure of appropriated funds that have a significant effect beyond the internal operating procedures of the agency or a significant cost or administrative impact on contractors or offerors must be published for public comment at least 30 days before they may take effect.

(1) The statute does not delineate those policies and procedures that will have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact. Examples of policies or procedures that fall in either of these categories are given in paragraphs (b)(1) (i) through (iv) of this section. This list is not all inclusive and does not prohibit the agency from publicizing a policy or procedure that does not fall within one of the categories mandated by the statute.

(i) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have been designated as an endangered species, has a significant cost impact for contractors who must obtain protective devices for boat propellers and take other safety actions.

(ii) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(iii) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(iv) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(2) In contrast, the following would not have to be publicized for public comment:

(i) Security procedures for identifying and badging contractor personnel to obtain general access at a NASA installation.

(ii) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is part of the specification or statement of work.)

(iii) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

1801.302 Limitation.

1801.302-70 Field installation regulatory implementation.

(a) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies and procedures, described in 1801.301, must be forwarded to NASA Headquarters for approval in accordance with 1801.271.

(b) The procurement officer at each installation shall establish procedures, including screening and written rationale for each installation procurement policy, regulation, procedure, and form, to demonstrate compliance with 1801.302-70(a). The procurement officer shall provide a copy of each of these issuances, along with the associated rationale, to the Assistant Administrator for Procurement (Attn. Code HP).

[54 FR 28188, July 5, 1989, as amended at 54 FR 53622, Dec. 29, 1989]

1801.303 Publication and codification.

1801.303-70 Assignment of numbers.

(a) Part, subpart, section, and subsection numbers 1 through 69 are reserved for FAR use.

(b) Part, subpart, section, and subsection numbers 70 through 89 are reserved for NASA FAR Supplement use.

Subpart 1801.4—Deviations From the FAR

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the NASA FAR Supplement and for the internal processing of FAR deviation requests under FAR subpart 1.4.

1801.401 Definition.

Deviation means "deviation" as defined at FAR 1.401, except that, for NASA, the words "or NASA FAR Supplement" are added wherever "FAR" appears in the definition.

1801.402 Policy.

Unless precluded by law, Executive Order, or regulation, deviations from the FAR and NASA FAR Supplement may be granted only as specified in this subpart 1801.4. See FAR part 53 and part 1853 of this regulation regarding exceptions to forms prescribed in them.

1801.403 Individual deviations.

Individual deviations affect only one contracting action and, unless FAR 1.405(e) is applicable, may be authorized only by the Assistant Administrator for Procurement or a designee. (See 1801.471 regarding requests for deviations.)

1801.404 Class deviations.

Class deviations affect more than one contracting action. When it is known that a class deviation will be required on a permanent basis, the contracting office should propose an appropriate FAR or NASA FAR Supplement revision to cover the matter. Only the Assistant Administrator for Procurement or a designee may approve class deviations. (See 1801.471 regarding requests for deviations.)

1801.405 Deviations pertaining to treaties and executive agreements.

Deviations from the FAR or NASA FAR Supplement pertaining to treaties or executive agreements shall be processed under the procedures in FAR 1.405, except that deviations not authorized by FAR 1.405 (b) or (c) shall be requested under 1801.471.

1801.470 Modification to existing contracts adding new procurement.

When an existing contract is modified to add new procurement, approval of the deviations previously granted for the existing contract must be obtained for the modification as though the modification were a new contract. "New procurement," for the purpose of this section, means any action that is competed or that must be authorized under FAR 6.302. An information copy of each request for deviation shall be furnished to the cognizant Associate Administrator.

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the provisions of the FAR or of this regulation shall be:

(1) Submitted to the Office of Procurement, NASA Headquarters (Code HP);

(2) Signed by the procurement officer or, in that person's absence, by the acting procurement officer; and

(3) Submitted as far in advance as the exigencies of the situation will permit.

(b) Each request for a deviation shall contain, as a minimum—

(1) Identification of the FAR or NASA FAR Supplement requirement from which a deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of its intended effect;

(4) A statement as to whether the deviation has been requested previously and, if so, the circumstances of the previous request;

(5) The name of the contractor and identification of the contract affected, including the dollar value;

(6) Detailed reasons supporting the request, including any pertinent background information that will contribute to a fuller understanding of the deviation sought; and

(7) A copy of counsel's concurrence or comments.

Subpart 1801.6—Contracting Authority and Responsibilities

1801.601 General.

At NASA, the authority to contract for authorized supplies and services is delegated to the Assistant Administrator for Procurement by NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement), and the authority to act in certain circumstances is redelegated to various NASA officials by NMI 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials).

1801.602-3 Ratification of unauthorized commitments.

(a) *Policy.* (1) Unauthorized commitments are strongly discouraged and can indicate serious employee misconduct. Individuals making unauthorized commitments may be subject to disciplinary action, and the issue may be referred to the Office of Inspector General.

(2) Section 1802.101 defines the head of the contracting activity in NASA. See FAR 1.602-3(b)(2).

(b) *Limitations.* (1) The authority in FAR 1.602-3 may be exercised only when—

(i) The Government employee who made the unauthorized commitment, or his/her supervisor, if appropriate, initiates a procurement request in accordance with 1804.7301(a) (the procurement request and/or accompanying documentation shall identify the individual who made the unauthorized commitment, explain why normal acquisition procedures were not followed, explain why the firm was selected, list other sources considered, describe the work, and estimate or state the agreed price); and

(ii) The contracting officer obtains a certification that funds are available and were available at the time the unauthorized commitment was made, in accordance with FAR 1.602-3(c)(6).

(2) The ratifying official shall provide a copy of each ratification along with information specified in FAR 1.602-3 and this paragraph (b) to the Assistant Administrator for Procurement (Attn: Code HP).

1801.603 Selection, appointment, and termination of appointment.

1801.603-2 Selection.

(a) *Policy.* The objective of issuing contracting officer Certificates of Appointment, SF 1402, is to ensure that only officials fully qualified to obligate the Government for the expenditure of public funds for the procurement of supplies and services are appointed contracting officers when an organizational need occurs. Normally, only GS-1105 and GS/GM-1102 personnel may be appointed contracting officers.

(b) *Appointment levels.* There are three levels of appointment authority, as follows; the appropriate appointment level shall be specified on the SF 1402 upon issuance:

(1) Basic level: Applies to personnel in the GS-1102 or GS-1105 series with signature authority for small purchases, orders placed under Federal Supply Schedule contracts, mandatory sources, or blanket purchase agreements.

(2) Intermediate level: Applies to those in the GS/GM-1102 series delegated authority to execute contracts and contract modifications for up to $500,000.

(3) Senior level: Applies to those in the GS/GM-1102 series delegated authority to execute contracts and contract modifications exceeding $500,000.

(c) *Organizational need determination.* NASA contracting officers shall be appointed only when a valid organizational need can be demonstrated. Factors to be considered in assessing the need for a contracting officer include volume of actions, complexity of work, and organizational structure.

(d) *Selection procedure.* (1) Once the organizational need is determined, the supervisor will nominate a contracting officer candidate. At the supervisor's request, the candidate shall prepare a qualification statement (or SF 171) containing the information listed in paragraphs (d)(1) (i) through (viii) of this section:

(i) Name.

(ii) Title, series, and grade.

(iii) Office.

(iv) Relevant experience, beginning with current position to a total of four relevant positions, including for each position—

(A) Employer;

(B) Dates employed;

(C) Title of position;

(D) Kind of business/organization; and

(E) Description of work.

(v) Other relevant special qualifications, certifications, or skills.

(vi) Relevant honors, awards, or fellowships received.

(vii) Education, including—

(A) Highest level completed;

(B) High school name, dates attended, and diploma received; and

(C) College or university name, dates attended, degree(s) received; chief undergraduate college subjects; number of credits (show whether semester or quarter hours) completed; and major field of study at highest level of college work.

(viii) Procurement-related training including—

(A) Name of course;

(B) Name of school; and

(C) Dates attended.

(2) The supervisor will review the qualification statement to determine the candidate's ability to perform the functions required to meet the organizational need. The supervisor will then complete a Request for Appointment of a Contracting Officer, using the format shown below, justifying the validity of the organizational need and verifying the candidate's qualifications. This document will be signed by the candidate's supervisor and submitted through appropriate organizational channels to the appointing authority (see NMI 5101.24). If the appointing authority requires additional information, the application will be returned with a request for further explanation or supporting data.

FORMAT

Request for Appointment of a Contracting Officer

The following findings and determinations are made, pursuant to applicable laws and regulations:

(Insert appropriate information)

1. There is a clear and convincing need to appoint a contracting officer with the ability to perform at the ______ (basic, intermediate, or senior) contracting officer warrant level, for the following reasons:

(Insert appropriate reasons)

2. The contracting officer candidate is—

____

(Name, Title, Series, and Grade)

3. The contracting officer candidate will occupy the organizational level described below:

____

(Office/Division/Branch and Location)

4. The candidate's qualifications statement is enclosed. It was found that (insert the appropriate statement)

-The candidate's experience and training meet the established qualification standards.

-This candidate does not meet the minimum qualifications in ______________ experience and/or training as indicated in the justification; *therefore*, an interim appointment for the period of ______________ is requested. These experience and/or training needs will be identified in the candidate's individual development plan and must be completed by ______________.

5. The candidate's current conflict-of-interest disclosure statement is on file in the appropriate personnel office or is attached.

6. In addition to the FAR, the NASA FAR Supplement, laws, Executive Orders, NASA Management Instructions, and other applicable regulations, the following warrant limitations are imposed:

a. Dollar Threshold: __________

b. Other Limitations: __________

Supervisor: ______________________________

(Signature of Supervisor of the Candidate)

____

(Date) (Typed Name)

____

(Contracting Office) (Title)

Approved: ______________________________

(Appointing Authority) (Date)

(3) If the appointing authority approves the Request for Appointment of a Contracting Officer, the appointing authority shall issue a Standard Form (SF) 1402, Certificate of Appointment, in accordance with 1801.603-3. A copy of the SF 1402, the Request for Appointment of a Contracting Officer, and the qualification statement shall be maintained for each contracting officer in a central location in the installation's contracting office while the SF 1402 is effective and for three years after its termination or after the individual has left the contracting office's employ. A copy of each SF 1402 issued shall be provided to NASA Headquarters, Office of Procurement (Code HM). Each installation shall maintain an up-to-date listing, by name and position, of all the installation's contracting officers and the limitations imposed on them in their warrants. A copy of this listing shall be provided annually to NASA Headquarters, Office of Procurement (Code HM).

(e) *Qualifications.* (1) The following are the experience, education, and training requirements needed to qualify for each of the three contracting officer appointment authority levels. Appointing authorities may establish additional qualifications, as appropriate. For example, additional qualifications may be established for those authorized to sign incentive and award-fee actions.

(i) *Experience.* (A) Basic level: One year of current experience in Government or commercial procurement, including six months experience in small purchasing.

(B) Intermediate level: Two years of current, progressively complex and responsible procurement or staff experience in Government or commercial procurement.

(C) Senior level: Four years of current, progressively complex and responsible procurement or staff experience in Government or commercial procurement.

(ii) *Education (preferred, not mandatory).* (A) Basic level: A high school diploma or equivalent.

(B) Intermediate and senior levels: A bachelor's degree from an accredited college or university that included or was supplemented by at least 24 semester hours in a field of study directly related to procurement, such as business administration, contract law, accounting, Government management, industrial purchasing, or material management.

(iii) *Training.* Except as provided in paragraph (f) of this section, acceptable formal training courses covering the subject matter listed below must be satisfactorily completed before a candidate may be nominated for a contracting officer appointment. Approved equivalency tests may be used as substitutes for these formal training requirements.

(A) Basic level: 40 hours of formal training covering the application of fundamental principles, policies, procedures, and practices in procurement.

(B) Intermediate level: 80 hours of formal training covering functional knowledge of procurement law, policies, procedures, and methods, including, as a minimum, Government contract law, procurement by negotiation, procurement by sealed bidding, contract administration, and cost and price analysis.

(C) Senior level: 120 hours of formal training, including analysis of procurement methods and techniques to enable an individual to manage contractual relationships effectively. The general topics described in paragraphs (e)(1)(iii) (A) and (B) of this section also apply to the senior level.

(2) A two-year associate's degree in a procurement-related field, such as business administration or accounting, may be substituted for six months of procurement experience. A four-year undergraduate program degree in a procurement-related field from an accredited college or university may be substituted for procurement experience at the rate of 12 semester credit hours for three months of procurement experience. One year of concentrated experience in an advanced procurement subject area beyond the two-year minimum for the intermediate-level qualifications and the four-year minimum for senior-level qualifications may be substituted for 24 classroom hours of formal training in procurement, up to a maximum of 96 classroom hours.

(f) *Interim appointments.* Personnel shall not ordinarily be appointed contracting officers if they do not meet the applicable qualifications prescribed in this subsection. If it is necessary to appoint a contracting officer who does not fully meet the qualifications, an interim appointment may be granted. The appointing authority shall require as a condition of the interim appointment that all training or experience requirements will be met within a specified reasonable period of time. Failure to successfully complete the training requirements within this time frame will result in termination of the appointment or issuance of another interim warrant, whichever is considered necessary by the appointing authority. The appointing authority must fully document these actions.

(g) *Condition of appointment.* As a condition of continuing appointment, all contracting officers shall be required to complete a procurement-related Government, commercial, or academic course/seminar satisfactorily at least once every five years. This training will preferably be in an area closely related to that in which the contracting officer is assigned.

(h) *Changes to contracting officer appointments.* Changes, either increasing or decreasing the warrant limitations of a contracting officer, shall be made solely at the discretion of the appointing authority. When an appointing authority determines to make such changes, a new SF 1402 shall be issued, and the existing warrant shall be officially terminated.

1801.603-3 Appointment.

(a) The SF 1402 shall be construed as authorization of designated personnel to exercise contracting officer authority in accordance with the FAR, the NASA FAR Supplement, and the NASA Procurement regulation. The limitations section of the SF 1402 shall, immediately after the word "following," state: "the limitations contained in the NASA FAR Supplement and the NASA Procurement Regulation."

(b) If the appointing official chooses to restrict a contracting officer from exercising authority under the NASA Procurement Regulation, the limitations section of the SF 1402 shall, immediately after the word "following," state: "* * * the limitations contained in the NASA FAR Supplement."

1801.603-4 Termination.

The appointing authority may terminate the appointment of a contracting officer at any time. Contracting officers whose appointments are terminated shall be given by the appointing authority a written notice stating the reasons for and the effective date of the termination.

1801.670 Delegation of procurement responsibilities.

(a) *Delegations to non-GS/GM-1102 or 1105 personnel.* (1) Contracting officer duties are typically performed by GS/GM-1102 or 1105 personnel within the procuring organization. In certain limited situations, it may be appropriate to designate non-GS/GM-1102 or 1105 personnel as contracting officers. The authority to obligate appropriated funds for the procurement of supplies and services may be delegated to non-GS/GM-1102 or 1105 personnel; provided all of the conditions in (a)(1) (i) through (iv) of this section are met:

(i) A contracting officer warrant must be issued to the non-GS/GM-1102 or 1105 individual. The warrant must include a specific dollar limitation set as low as possible. This limitation shall not exceed the small purchase threshold in effect at the time of the delegation. Specific dollar limitations well below the small purchase threshold should normally be sufficient and are encouraged. The warrant may include further limitations, such as the types of supplies or services that may be acquired.

(ii) Only the procurement officer at each installation is authorized to issue or terminate contracting officer warrants to non-GS/GM-1102 or 1105 personnel. This authority is nondelegable.

(iii) Contracting officer warrants for non-GS/GM-1102 or 1105 personnel may be issued only for small purchase procedures (FAR part 13 and NFS part 1813). These procedures include executing purchase orders and modifications to purchase orders. Authority to issue or sign contracts, unilateral or bilateral contract modifications of any amount, or orders above the small purchase threshold on Federal Supply Schedules is not delegable to non-GS/GM-1102 or 1105 personnel.

(iv) The selection, appointment, and termination procedures in 1801.603 shall be followed. In particular, the education, training, and experience requirements for a basic-level contracting officer (see 1801.603-2(e)) must be met before a warrant is issued. The experience requirement at 1801.603-2(e)(1)(i)(A) may be obtained either within a procurement office or in an office that otherwise does procurement work. For example, a training specialist may acquire the experience requirement by preparing in the installation's personnel office purchase orders for training that will be signed by a warranted contracting officer.

(2) The responsibility for monitoring the procurements made by non-GS/GM-1102 or 1105 contracting officers remains with the procurement officer who issues their warrants. The procurement officer is responsible for ensuring that a system is in place that provides for general oversight of the continued need for each specific warrant and periodic review of the quality of the procurement actions taken. These reviews shall be made no less frequently than semiannually.

(3) Examples of contracting officer designations that may be appropriate for non-GS/GM-1102 or 1105 personnel are the authorization to the installation's training officer to sign purchase orders for off-the-shelf training courses under a certain dollar amount, or to the installation's librarian to place orders up to $X for magazine subscriptions.

(4) The requirements for imprest funds are established by the NASA Financial Management Manual; use of imprest funds does not require contracting officer warrants or authority.

(5) The term "ordering officer" is not authorized for use in delegating procurement functions to non-GS/GM-1102 or 1105 personnel.

(b) *Delegations to contracting officer's technical representatives (COTRs).* A COTR delegation may be made only by the contracting officer cognizant of that contract at the time the delegation is made. If the cognizant contracting officer is absent, the delegation letter may be signed by a warranted contracting officer at any level above the cognizant contracting officer. An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them. COTRs should be informed that they may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments shall not be delegated through a COTR designation or by any means other than a contracting officer warrant. However, delegations may be made to construction contract COTRs to sign emergency change orders with an estimated value not to exceed $2,500 on-site at construction sites.

Subpart 1801.7—Determinations and Findings

1801.703 Class determinations and findings.

The effective period specified in each class determination and findings (D&F) shall not ordinarily exceed one year. When a longer period is considered appropriate and necessary, the D&F shall say why.

1801.704 Content.

Content and format requirements in addition to those at FAR 1.704 are specified in the associated subject text. While the contracting officer is responsible for preparing D&Fs, requirements and technical personnel are responsible for the accuracy and adequacy of the supporting factual information, which shall be furnished to the contracting officer in writing.

1801.707 Signatory authority.

Signatory authority for D&Fs is specified in the FAR or NASA FAR Supplement text for the associated subject matter. The Administrator may make any of the D&Fs that may be made by the Assistant Administrator for Procurement or by a contracting officer.

PART 1802—DEFINITIONS OF WORDS AND TERMS

Sec.
1802.000 Scope of part.

Subpart 1802.1—Definitions

1802.101 Definitions.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28194, July 5, 1989, unless otherwise noted.

1802.000 Scope of part.

Commonly used words and terms are defined in FAR subpart 2.1. This part 1802 gives NASA-specific meanings of some of these words and terms and defines other words and terms commonly used in the NASA acquisition process.

Subpart 1802.1—Definitions

1802.101 Definitions.

The following words and terms are used throughout this regulation as defined in this subpart unless—

(a) The context in which they are used clearly requires a different meaning; or

(b) A different definition is prescribed for a particular part or portion of a part.

Administrator means the Administrator or Deputy Administrator of NASA.

Assistant Administrator for Procurement means the Assistant Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

Contracting activity in NASA includes each "installation" as defined in this section 1802.101.

Contracting office means the same thing as the previously used term *procurement office.*

Field installation means Ames Research Center, Goddard Space Flight Center, John F. Kennedy Space Center, Langley Research Center, Lewis Research Center, Johnson Space Center, George C. Marshall Space Flight Center, John C. Stennis Space Center, or any other field installation established by NASA in the future.

Head of the agency or *agency head* means the Administrator or Deputy Administrator of NASA.

Head of the contracting activity means, for field installations, the Director or other head and, for NASA Headquarters, the Assistant Administrator for Procurement.

Installation means NASA Headquarters or any field installation and is synonymous with *contracting activity*.

Procurement means the same thing as *acquisition*, as defined in FAR 2.101.

Procurement officer means the chief of the contracting office, as defined in FAR 2.101.

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1—Safeguards

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1803.101 Standards of conduct.
1803.101-1 General.
1803.101-2 Solicitation and acceptance of gratuities by Government personnel.
1803.104 Procurement integrity.
1803.104-2 Applicability.
1803.104-4 Definitions.
1803.104-5 Disclosure of proprietary and source selection information.
1803.104-6 Restrictions on Government officials, employees, and contractors serving as procurement officials.
1803.104-7 Identification of the beginning of the conduct of a Federal agency procurement.
1803.104-9 Certification requirements.
1803.104-11 Processing violations and possible violations.
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Subpart 1803.2—Contractor Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

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1803.502 Subcontractor kickbacks.

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1803.602 Exceptions.

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy.
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Subpart 1803.8—Limitation on the Payment of Funds To Influence Federal Transactions

1803.804 Policy.
1803.806 Processing suspected violations.

Subpart 1803.70—Contracts Between NASA and Its Former Employees

1803.7001 Policy.
1803.7002 Solicitation provision.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28194, July 5, 1989, unless otherwise noted.

Subpart 1803.1—Safeguards

1803.101 Standards of conduct

1803.101-1 General.

(a) Federal statutes prohibit certain acts by Government personnel and special Government employees as defined in 18 U.S.C. 202 in relation to Government procurement. Among these statutes are:

(1) 18 U.S.C. 201, relating to bribes in order to secure a Government contract;

(2) 18 U.S.C. 203, relating to compensation for services rendered in connection with any proceeding or claim in which the United States has an interest;

(3) 18 U.S.C. 205, relating to acting as an agent or attorney for prosecuting any claim against the United States;

(4) 18 U.S.C. 208, relating to transacting business as an officer or agent of the United States with firms of which the officer or agent, or a spouse, minor child, or partner, is an official or in which the officer or agent has a pecuniary interest; and

(5) 18 U.S.C. 209, relating to compensation from non-Government sources

in connection with Government services.

(b) The statutory prohibitions and their application to NASA personnel are discussed in NHB 1900.1, Standards of Conduct for NASA Employees, and NHB 1900.2, Standards of Conduct for NASA Special Government Employees. All NASA personnel involved in procurement actions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218). (See subpart 1803.70 for policy on contracting with former NASA employees.)

1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the installation's Office of Inspector General. (See Standards of Conduct for NASA Employees, NHB 1900.1.)

1803.104 Procurement integrity.

1803.104-2 Applicability.

Pursuant to section 507 of the Ethics Reform Act of 1989 (Pub. L. 101-194), the requirements of this section are suspended for the period of December 1, 1989, through November 30, 1990.

[54 FR 53623, Dec. 29, 1989]

1803.104-4 Definitions.

Agency standards of conduct regulations means NASA Handbook (NHB) 1900.1, Standards of Conduct for NASA Employees.

[54 FR 39360, Sept. 26, 1989]

1803.104-5 Disclosure of proprietary and source selection information.

(a) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information.

(b) Unless marked with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104," draft specifications, purchase descriptions, and statements of work are not considered source selection information when released during a market survey in order to determine the capabilities of potential competitive sources (see FAR subpart 7.1). If marked with the legend, they may be released during a market survey as authorized by the contracting officer after removal of the legend. Draft documents, after having been released, must remain available to the public until the conclusion of the procurement.

(c) Government employees serving in the following positions are authorized access to proprietary or source selection information for the particular procurements for which they have responsibility:

(1) Personnel participating in source evaluation board (SEB) procedures under 1815.613-71 and 1870.303, App. I.

(2) Personnel assigned to the contracting office.

(3) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(4) Small business specialists.

(5) Personnel assigned to counsel's office.

(6) Personnel who evaluate an offeror's or bidder's technical or cost proposal.

(7) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.

(8) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in subpart 1807.71.

(9) Other Government employees authorized by the contracting officer.

(10) Supervisors, at any level, of the personnel listed in 1803.104-5(c) (1) through (9).

(d) Release of proprietary or source selection information to other than Government employees may be authorized in accordance with FAR 15.413-2, 1815.413, and 1815.413-2.

(e) For contracts and contract modifications over $100,000, release of proprietary or source selection information to another Government activity shall be made by a letter citing the obligation under FAR 3.104-5(d) to maintain a list of persons or classes of persons authorized access to proprietary or source selection information and to provide the list to the contracting officer for the contract file.

[54 FR 39360, Sept. 26, 1989]

1803.104-6 Restrictions on Government officials, employees, and contractors serving as procurement officials.

(a) Persons who are generally considered procurement officials (for the procurements where their participation is personal and substantial) include, but are not limited to:

(1) Contracting officer.

(2) Contract negotiator.

(3) Contract specialist.

(4) Cost and price analyst.

(5) Buyer.

(6) Initiator of the procurement request (to include the official having principle technical cognizance over the requirement).

(7) Writer of material for inclusion in a statement of work, purchase description, or specification for a particular procurement.

(8) Participant, except for clerical personnel, at an acquisition strategy meeting under 1807.7105.

(9) Member of an SEB under 1815.613-71 and 1870.303, App. I.

(10) Source selection official.

(11) Small business specialist.

(12) Attorney-advisor.

(13) Personnel who evaluate an offeror's or bidder's technical or cost proposal.

(14) Personnel, conducting preaward audits, surveys, and technical evaluations, assigned to the Defense Contract Audit Agency or contract administration offices of the Department of Defense.

(15) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in subpart 1807.71.

(16) Supervisors, at any level, of personnel listed in paragraphs (a)(1) through (15) of this section, when a subordinate's participation in the procurement is directed by the supervisor and that participation is substantial.

(b) The contracting officer shall obtain the following certification from any procurement official leaving the Government or transferring to another Government agency or any contractor employee serving as a procurement official who ceases performance of those duties during the conduct of a procurement expected to result in a contract or modification in excess of $100,000 (see FAR 37.208):

PROCUREMENT OFFICIAL CERTIFICATION UPON TERMINATION OF GOVERNMENT SERVICE

I, [Name of procurement official], hereby certify that I understand the continuing obligation under section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) not to disclose proprietary or source selection information relating to any ongoing procurement for which I have served as a procurement official.

—Signature of procurement official and date ———————————————

Identify applicable procurements (ones for which awards have not been made at the time of the Procurement Official's departure): [List procurements]

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under title 18, United States Code, section 1001.

(End of certification)

[54 FR 39360, Sept. 26, 1989]

1803.104-7 Identification of the beginning of the conduct of a Federal agency procurement.

The beginning of the conduct of a NASA procurement shall be the earliest of the following dates:

(a) The date that an authorized official determines that a specific NASA need or requirement shall be satisfied by procurement and action is taken to initiate the development of an acquisition plan, statement of work, specification, or purchase description.

(b) The date of an Acquisition Strategy Meeting pursuant to 1807.7105 (see FAR 3.104-7(c)).

(c) The date of the procurement plan (e.g., the date in Block 4 of the Request for Procurement Plan Approval, NASA Form 1451, pursuant to 1807.170-1(b)(4)) (see FAR 3.104-7(d)).

(d) The date that the purchase request or procurement request (PR) is signed by the PR initiator (see FAR 3.104-7(e)).

(e) The date that NASA or contractor personnel are first assigned or begin, whichever is earlier, to develop a statement of work, purchase description, or specification for a particular procurement (see FAR 3.104-7 (f) and (g)).

(f) The date of receipt of an unsolicited proposal, a proposal in response to a broad agency announcement (BAA), or a proposal under the Small Business Innovation Research (SBIR) Program.

(g) Except for BAAs and SBIR, the date that the synopsis, prepared pursuant to FAR 5.201(b) or 5.205 (a) or (c), is transmitted to the Commerce Business Daily for publication (see FAR 3.104-7 (b) and (h)).

[54 FR 39361, Sept. 26, 1989]

1803.104-9 Certification requirements.

For Basic Ordering Agreements (BOAs), the signed certification required by FAR 3.104-9 shall be submitted prior to issuance of each order expected to exceed $100,000. For orders under BOAs, the beginning of the conduct of a procurement (see FAR 3.104-7) applies only to the instant order.

[54 FR 39361, Sept. 26, 1989]

1803.104-11 Processing violations and possible violations.

(a) The Procurement Officer is the individual designated to receive the contracting officer's report of violations in accordance with FAR 3.104-11.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Assistant Administrator for Procurement (Attn: Code HM).

(c) When the HCA or designee determines under FAR 3.104-11(d) that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Assistant Administrator for Procurement (Attn: Code HP) simultaneous with transmittal to the Administrator.

[54 FR 39361, Sept. 26, 1989]

1803.104-12 Ethics programs training requirements.

Individuals who will serve as procurement officials shall, as a condition of serving as a procurement official, complete the following certification required by FAR 3.104-12(a)(2):

CERTIFICATION OF PROCUREMENT OFFICIAL

I, [Name], hereby certify that I am familiar with the provisions of subsection (b) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) and, with respect to any procurement for which I am a procurement official, will not engage in any conduct prohibited by such subsection, and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections (a), (b), (c), or (e) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the Federal Acquisition Regulation. The terms of section 27 (together with applicable regulations) have been made available to me.

I understand that my execution of this certification does not make me a procurement official, nor will it be utilized to establish that I am a procurement official.

Signature and Date

(End of certification)

[54 FR 39361, Sept. 26, 1989]

Subpart 1803.2—Contractor Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Any suspected violations of the clause at FAR 52.203-3, Gratuities, shall be reported to the installation's Office of Inspector General.

Subpart 1803.3—Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations.

(a) When offers are received that, in the opinion of the contracting officer, indicate possible antitrust violations, the contracting officer shall report the circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement (Code HP). Reports should not be submitted automatically but only when there is reason to believe the offers may not have been arrived at independently. These reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth—

(1) The noncompetitive pattern or situation under consideration;

(2) Purchase experience in the same product or service for a reasonable period (one or more years) preceding receipt of the offers under consideration, including unit and total contract prices and abstracts of bids;

(3) Community of financial interest among bidders, insofar as it is known;

(4) The extent, if any, to which specification requirements or patents restrict competition;

(5) Any information available about the pricing system employed in offers believed to reflect noncompetitive practices; and

(6) Any other pertinent information.

(b) Evidence of practices that, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see FAR 3.303).

(c) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Office of Procurement (Code HP). The report shall include the reasons for suspecting collusion. Code HP shall forward a copy to the NASA Office of the Inspector General.

Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported in accordance with 1809.470.

Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled By Them

1803.602 Exceptions.

The Administrator has delegated to the Assistant Administrator for Procurement authority to authorize an exception to the policy in FAR 3.601 (see NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement)). The Assistant Administrator for Procurement hereby redelegates this authority to a head of contracting activity (HCA) for individual actions in the aggregate of $100,000 and below, inclusive of follow-on procurements, with concurrence by the HCA's Office of Chief Counsel. All requests above the HCA's authority shall be forwarded to the Assistant Administrator for Procurement (Code HS) for approval.

[55 FR 12174, Apr. 2, 1990]

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy.

The Assistant Administrator for Procurement has been delegated authority to void or rescind contracts when there is a final conviction for violation of 18 U.S.C. 201-224 (Bribery, Graft and Conflicts of Interest) relating to them.

1803.705 Procedures.

(a) The official to whom reports shall be sent pursuant to FAR 3.705(a) is the Assistant Administrator for Procurement; they shall be sent by the procurement officer.

(b) The Assistant Administrator for Procurement is responsible for the actions, notices, and decisions required by FAR 3.705 (c), (d), (e).

Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions.

SOURCE: 55 FR 12174, Apr. 2, 1990, unless otherwise noted.

1803.804 Policy.

(a) The Headquarters Procurement Management Division (Code HM) is responsible for collecting and compiling contractors' disclosures and for preparing the report for submission to Congress.

(b) Procurement officers shall forward one copy of each Disclosure of Lobbying Activities Form furnished pursuant to FAR 3.803 to Code HM. The original shall be retained in the contract file. Forms shall be submitted quarterly by the 15th of the month following the end of the quarter.

1803.806 Processing suspected violations.

The Assistant Administrator for Procurement (Code HP) is the designated official to whom suspected violations of the Act shall be referred.

Subpart 1803.70—Contracts Between NASA and Its Former Employees

1803.7001 Policy.

(a) It is NASA policy that contracts not normally be placed on a noncompetitive basis with any individual employed by NASA during the past two years or with any firm in which such an individual is a partner, principal officer, or majority shareholder or that is otherwise controlled or predominantly staffed by such individuals, unless it is determined to be in the best interest of the Government to do so (see 1806.303-270).

(b) Where it has been determined that it is appropriate to contract on a non-competitive basis with an individual or firm described in paragraph (a) of this section, the approval authority for the justification for less than full and open competition shall be as specified in 1806.304-70.

(c) If individuals or firms described in paragraph (a) of this section are involved in a competitive procurement, precautions must be taken to ensure that they are not accorded preferential treatment. If one of them is the successful offeror, the contract file shall include a separate document fully explaining the safeguards used to ensure fair treatment of all offerors under the procurement, unless sealed bidding is used.

(d) Nothing in this subpart shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207 (Disqualification of Former Officers and Employees).

(e) The policy in paragraph (a) of this section shall also be followed when reviewing subcontracts for the purpose of granting consent under NASA prime contracts (see FAR 44.202-2(a)(7)).

1803.7002 Solicitation provision.

The contracting officer shall insert the provision at 1852.203-70, Contracts Between NASA and Former NASA Employees, in all solicitations other than invitations for bids.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.1—Contract Execution

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1804.101 Contracting officer's signature.
1804.103 Contract clause.
1804.170 Contract effective date.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.402 General.
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Subpart 1804.6—Contract Reporting

1804.601 Record requirements.
1804.602 Federal Procurement Data System.
1804.603 Solicitation provision.
1804.670 General.
1804.671 Individual Procurement Act Report (NASA Form 507 series).
1804.671-1 Applicability and coverage.
1804.671-2 Contractual records.
1804.671-3 Submission due date.
1804.671-4 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).
1804.671-5 [Reserved]
1804.671-6 Special procurement placement codes (PPC's) for certain procurements.
1804.671-7 Procurement placement codes (PPC's).
1804.672 Report on NASA Subcontracts clause.
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1804.675 NASA contractor financial management reporting.
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1804.676 Committee on Academic Science and Engineering (C.A.S.E.) Report.

Subpart 1804.8—Contract Files

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Subpart 1804.70—Transfer of Contracting Office Responsibility

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1804.7011 Final action by the contracting officer transferring the contract.
1804.7012 Action by the contracting officer receiving the contract.

Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.
1804.7101 Policy.
1804.7102 Invitations for bids, requests for proposals, NASA Research Announcements, contracts, agreements, and modifications.
1804.7102-1 Identification of solicitations.
1804.7102-2 Contracts and agreements requiring numbering.
1804.7102-3 Assignment and control of numbers.
1804.7102-4 Assigned contract or agreement prefixes.
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1804.7102-6 Modifications of contracts or agreements.
1804.7102-7 Letter contracts.
1804.7103 Purchase orders and requests.
1804.7103-1 General.
1804.7103-2 Assigned purchase order or request prefixes.
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Subpart 1804.72—Review and Approval of Contractual Instruments

1804.7200 Scope of subpart.
1804.7201 Advance information.
1804.7202 Contract review by the contracting officer.
1804.7203 Contract review by Headquarters.

Subpart 1804.73—Procurement Requests

1804.7301 General.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28196, July 5, 1989, unless otherwise noted.

Subpart 1804.1—Contract Execution

1804.101 Contracting officer's signature.

The contracting officer shall sign negotiated contracts after the contractor unless the particular contract form or circumstances of the acquisition require otherwise.

1804.103 Contract clause.

The contracting officer shall include the clause at FAR 52.204-1, Approval of Contract, in solicitations, contracts, and supplemental agreements subject to Master Buy Plan procedures (see 1807.7102). Insert "NASA Assistant Administrator for Procurement" if the procurement has been selected for Headquarters approval of the contract under the Master Buy Plan procedures.

[54 FR 36361, Sept. 26, 1989]

1804.170 Contract effective date.

(a) "Contract effective date" means the date agreed upon by the parties for beginning the period of performance under the contract. It shall be on or after the date on which the contract becomes legally binding. Generally, a contract becomes legally binding when the offeror receives the document, signed by both parties, unless, by its terms, it does not become binding until some subsequent condition is met (e.g., approval by higher authority (FAR 52.204-1) or availability of funds (FAR 52.232-18)). The effective date should allow adequate time for the offeror or its agent to receive the written acceptance, with any doubt being resolved by setting the effective date after the contract becomes legally binding. In no case shall the effective date precede the date on which the contracting officer or designated higher approval authority signs the document.

(b) Costs incurred before the contract effective date are unallowable unless they qualify as precontract costs (see FAR 31.205-32) and the clause prescribed at 1832.705-270(b) is used.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements.

(a) In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Scientific and Technical Information Facility, Attention: Document Processing Section, P.O. Box 8757, Baltimore/Washington International Airport, MD 21240.

(b) The Office of Procurement, NASA Headquarters (Code HS) will retain one executed copy of each contract and modification requiring approval of the Assistant Administrator for Procurement. Upon approval or disapproval of the proposed contract or modification, the Assistant Administrator for Procurement will forward the original and two executed copies of the contract or modification, together with the contract file, to the procurement officer or other official, as considered appropriate.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.402 General.

NASA industrial security policies and procedures are prescribed in NASA Management Instruction 1650.1, "Industrial Security Policies and Procedures." (See also 1842.202-72).

1804.404-70 Contract clause.

The Contracting Officer shall insert the clause at 1852.204-75, Security Classification Requirements, in solicitations and contracts if work to be performed will require security clearances. Insert the security clearance level applicable to the particular procurement. Include in the solicitation and contract a properly executed DD Form 254, Contract Security Classification, in accordance with NMI 1650.1. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular procurement and installation.

[54 FR 28196, July 5, 1989, as amended at 54 FR 39361, Sept. 26, 1989]

Subpart 1804.6—Contract Reporting

1804.601 Record requirements.

The Headquarters Procurement Management Division (Code HM) is responsible for developing the computer file specified in FAR 4.601, through the installation procurement officer's or delegatee's monthly submission of Individual Procurement Action Reports (NASA Form 507 series) for subsequent transmittal of the required data to the Federal Procurement Data System (FPDS).

[54 FR 28196, July 5, 1989, as amended at 54 FR 53623, Dec. 29, 1989]

1804.602 Federal Procurement Data System.

The Assistant Administrator for Procurement (Code HM) is responsible for requesting, obtaining, and reporting Contractor Establishment Codes to the FPDS.

[54 FR 39361, Sept. 26, 1989]

1804.603 Solicitation provision.

In accordance with the authority at FAR 4.603, the provision at FAR 52.204-4, Contractor Establishment Code, shall not be used in NASA solicitations.

[54 FR 39361, Sept. 26, 1989]

1804.670 General.

The following sections prescribe uniform reports required to be prepared in contracting and contract administration offices to provide management necessary information to help formulate, change, or measure the effectiveness of procurement policy.

1804.671 Individual Procurement Act Report (NASA Form 507 series).

The Individual Procurement Action Report and Supplement (NASA Forms 507, 507A, 507B, 507G, and 507M) provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to the President, Congress, Department of Commerce, Office of Federal Procurement Policy, Federal Procurement Data Center, Federal Emergency Management Agency, General Accounting Office, Small Business Administration, and other Federal agencies. The preparation and utilization of the NASA Form 507 series (see 1853.303-507 through 1853.303-507M) are an integral part of the agencywide Financial and Contractual Status (FACS) system.

[54 FR 28196, July 5, 1989, as amended at 54 FR 53623, Dec. 29, 1989]

1804.671-1 Applicability and coverage.

The following procurement actions are individually reportable and require the completion of one or more of the forms in the 507 series.

(a) *Initial basic procurements.* (1) All contracts, regardless of dollar obligation amount.

(2) All grants, cooperative agreements, and Space Act agreements.

(3) Intragovernmental procurements and purchase orders when the initial obligation is more than $25,000.

(4) All contracts and purchase orders for consulting services.

(5) Purchase orders of $25,000 or less for services within the four designated industry groups identified at FAR 19.1005(a) under the Small Business Competitiveness Demonstration Program. (These actions are not FACS reportable, but are required for FPDS reports.)

(b) *Modifications.* Modifications that:

(1) Obligate or deobligate funds, regardless of dollar amount,

(2) Change the estimated cost and/or fee by more than $25,000,

(3) Extend the completion date, or

(4) Add or change procurement statistics previously reported are reportable.

[54 FR 53623, Dec. 29, 1989, as amended at 55 FR 27088, June 29, 1990]

1804.671-2 Contractual records.

As used in this subpart 1804.6, "contractual records" embraces records for all reportable procurements, including contracts, grants, cooperative agreements, Space Act agreements, and intragovernmental awards. The NASA Forms 507 and 507A are the source of data for contractual records, with the exception of obligations, which are obtained from the financial records.

1804.671-3 Submission due date.

The FACS report shall have information as of the last day of the month and shall arrive in NASA Headquarters not later than the close of business on the eighth work day following each month being reported. The installation procurement officer should establish an agreement with the installation financial officer on a cut-off date for processing contractual documents to ensure that the FACS procurement submission and the FACS financial submission for the month include the same contracts.

1804.671-4 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).

Individual Procurement Action Reports shall be prepared and submitted to Headquarters for each procurement action required to be reported (see 1804.671-1). Specifically, for new contract awards, NASA Forms 507, 507A, and 507B are prepared. For new grants, agreements, intragovernmental agreements, and orders against federal supply schedules, NASA Forms 507G and 507B are prepared. For modifications to any of the above procurements, NASA Forms 507M and, if necessary, 507B are prepared. Detailed item instructions for preparing the NASA Forms 507 series are set forth in paragraphs (a) through (sss) below and correspond to the item numbers shown on the forms. Position numbers after each item indicate the maximum number of characters that may be used in reporting the data element. Item numbers 2-7, 9, 15a, 50-61 and 66 are for Acquisition Management Subsystem (AMS) reporting at the installation level only. Reporting of these specific data items to the FACS system is not required.

(a) *Item 1—Contract/grant number (11 positions, including blanks).* (1) Enter the specific contract, grant, cooperative agreement, Space Act agreement, or purchase order number for which the data are reported. The first five digits represent the prefix field, while the last six digits are used to number each contractual instrument serially. If a serial number does not fill out the entire field, leave those digit positions blank instead of using zeros. For utility contract and purchase order numbers, enter an alpha letter in the last position of the serial number, indicating the fiscal year the service was provided.

(2) The method of numbering—

(i) Contracts and purchase orders are set forth in subpart 1804.71 (e.g., NAS9-14000, NAS10-9080, NASW-2080);

(ii) Space Act agreements are set forth in subpart 1804.71 (e.g., NCA1-12500);

(iii) Grants are set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1, paragraph 306.1 (e.g., NAGW-1, NAG2-308);

(iv) Cooperative agreements is set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1, paragraph 306.2 (e.g., NCC 2-1); and

(v) Utility contracts and purchase orders are as follows:

Last digit		Last digit	
alpha letter	Fiscal years ending in	Alpha letter	Fiscal years ending in
Q	1	V	6
R	2	W	7
S	3	X	8
T	4	Y	9
U	5	Z	0

(b) *Item 2—Document suffix (1 position).* If an alpha suffix is used in the contract or purchase order number, enter the assigned suffix (e.g., "F" for facilities contracts). Otherwise, leave this item blank.

(c) *Item 3—Modification prefix (1 position).* If an alpha prefix is used in the modification number of the reported action, enter the assigned prefix. Otherwise, leave this item blank.

(d) *Item 4—Modification number (5 positions).* Enter the serial number assigned to the modification action.

(e) *Item 5—PR number (12 positions).* Enter the number assigned to the Procurement Request document which initiated the reported action.

(f) *Item 6—Closeout PR (1 position).* Enter "Y" if the reported action closes the PR reported in item 5. Otherwise, leave this item blank.

(g) *Item 7—Contractor VID (7 positions).* Enter the contractor's unique Vendor Identification Number (VID) which indicates the contractor's name and business address.

(h) *Item 7a—Contractor name (20 positions, including spaces).* Enter the name of the contractor. (For editing purposes, the first five characters of the contractor's name must be identical to those shown in "NASA Contractor Identification Codes.") For intragovernmental actions, enter the agency name (e.g., US Army, US Navy, US Commerce) and also see the Item 8 instructions immediately below. If the activity is under a single-manager agency, enter the name of the agency.

(i) *Item 7b—Contractor division (20 positions).* Enter the name of the contractor's division if one is named in the contractual instrument. (For editing purposes, the first five characters of the division name must be identical to those shown in "NASA Contractor Identification Codes.") For intragovernmental actions, enter the name of the cognizant procuring activity (e.g., Electronic Systems Division).

(j) *Item 7c—Contractor address—city and state.* Enter city and state of contractor's address as stated in the contractual instrument.

(k) *Item 8—Contractor identification code (CIC) number (7 positions).* This code is obtained from the publication "NASA Contractor Identification Codes," issued quarterly by the Headquarters Procurement Management Division (Code HM). It identifies the procurement in terms of the contractor's name, division (if any), address, and the place of performance. A unique code is assigned for each different combination of these items. For combinations not listed in the coding publication, NASA Form 507 preparers should call the Office of Procurement, NASA Headquarters (Code HM), where a code will immediately be assigned and the exact abbreviations, where appropriate, will be specified. The new code will be listed in the next issue of the coding publication.

(l) *Item 9—Place of performance VID (7 positions).* Enter the contractor's unique Vendor Identification Number (VID) which indicates the contractor's place of performance address.

(m) *Items 9a—Place of performance (city—24 positions; state—2 positions).* Enter the location (city and state) of the principal plant or place of business where the items will be produced or supplied from stock or where the service will be performed. (For editing purposes, the first three characters of the city name must be identical to those shown in "NASA Contractor Identification Codes.") For construction contracts, enter the site of construction. If more than one location is involved, enter the principal place of performance. For intragovernmental actions where the place of performance is unknown, enter the address of the cognizant Government agency. Enter the zip code in Item 11.

(n) *Item 10—Procuring installation number (2 positions).* Enter a numeric code identifying the installation responsible for the procurement. The following is a list of installations and their assigned codes:

Code	Installation
04	NASA headquarters.
06	Space station procurement office.
21	Ames research center.
22	Lewis research center.
23	Langley research center.
24	Dryden flight research facility.
51	Goddard space flight center.
53	Wallops flight facility.
54	NASA resident procurement office-JPL.
62	George C. Marshall space flight center.
64	John C. Stennis space center.
72	Lyndon B. Johnson space center.
76	John F. Kennedy space center.

(o) *Item 11—POP zip code (5 positions).* Enter the five digit zip code corresponding to the contractor's place of performance address.

(p) *Item 12—Contract award/modification date (6 position)*—(1) *Contract award.* Enter the year, month, and day (two numerics each) that the contract is signed by the contracting officer.

(2) *Modification date.* Enter the year, month, and day (two numerics each) that the modification is signed by the contracting officer.

(q) *Item 13—Completion date (6 positions).* Enter the year, month, and day (two numerics each), either specified or estimated, when all work on the contract and any modifications is scheduled for completion. This date may or may not change as modifications to the contract are issued.

(r) *Item 14—Procurement placement code (2 positions).* Enter the alpha procurement placement code (PPC) identifying the type of solicitation process used and the extent of competition obtained on the procurement. (See 1804.671-7 for PPC matrix.) The FACS system must be able to provide information on "noncompetitive procurements using competitive procedures," as required by Public Law 98-369; this is accomplished by selecting procurements coded 1 in Item 28 (Number of offers received) and coded 2, 3, or 4 in Item 18 (Extent of competition). These procurements must have one of the following competitive PPC's: AX, AE, AF, BX, BE, BF, FX, FE, FF, GF, KX, KE, QX, RS, RE, UX, TX, TE, XX, XE, or XD.

(s) *Item 15—Kind of action (2 positions).* Enter the numeric code from the following lists that identifies in general terms the kind of procurement and the action taken to initiate it:

Code	Kind of action
New Contracts/Grants/Orders:	
01	New letter contract.
03	New basic contract. New procurements, when the first binding document contains all the agreement's terms and conditions.
05	intragovernmental. Orders issued to other Federal agencies.
06	Grant.
21	Cooperative agreement or Spece Act agreement.
23	Order under Mandatory GSA-FSS. See FAR 8.404.
24	Order under optional (non-mandatory) GSA-FSS. See FAR 8.404-2.
25	Order under indefinite-delivery contract (IDC) (other than reporting center's).
26	Order under BOA (other than reporting center's).
Modifications To Existing Contracts:	
07	New-work modification. Modifications that add a new procurement to existing contracts. New procurement, for the purpose of this report, means a modification action that usually requires the preparation of a Justification for Other than Full and Open Competition (see FAR 6.303).
08	Supplemental agreement. Bilateral, definitized modifications except those covered by code 10 below.
09	Change order. Change orders issued pursuant to the changes clause of the contract.
10	Supplemental agreement definitizing change order.
11	Administrative/incremental funding. This code should be used for administrative changes (such as novation agreements) as well as for incremental funding modifications.
12	Termination for default.
13	Termination for convenience.
14	Definitizing letter contract.
15	Exercising priced option.
16	Order under reporting center's indefinite delivery contract (IDC).
17	Order under reporting center's BOA.

(t) *Item 15a—Center kind of action (2 positions).* Enter the numeric code, if applicable, from the following list that further identifies the kind of action reported in item 15:

Code	Center kind of action
14	Small purchase.
50	Basic ordering agreement (BOA).
52	Indefinite delivery type contract.
53	Basic ordering agreement modification.
54	Task order modification.
60	Blanket purchasing agreement (BPA).
61	Call against BPA.
99	Closing modification.

Leave this item blank if none of the above choices are descriptive of the action being reported. The information provided in this item is used in the generation of Procurement Management Data Reports (PMDR).

(u) *Item 16—Contractor type (2 positions).* Enter the appropriate code from the following:

Code	Contractor
Business:	
01	Section 8(a)—disadvantaged. Awards placed through the Small Business Administration with a minority business firm owned and controlled by socially and economically disadvantaged individuals, in accordance with Section 8(a) of the Small Business Act.
03	Disadvantaged direct. Awards placed direct, with a minority business firm owned and controlled by socially and economically disadvantaged individuals.
04	Not disadvantaged. Other large or small businesses that are not considered disadvantaged.
Nonprofit organization:	
05	Educational. An educational institution that is not State, Federal, or local-government owned.
06	Hospital. A hospital that is not State, Federal, or local-government-owned.
08	Other nonprofit. A nonprofit institution or organization that is a corporation, foundation, trust, or institution not organized for profit, and no part of its net earnings is applied to the profit of any private shareholder or individual.
State/local government:	
09	Educational. A State, Federal, or local-government-owned educational institution. (Privately owned educational institutions shall be coded 05.)
10	Hospital. A State, Federal, or local-government-owned hospital. (Privately owned hospitals shall be coded 06.)
12	Other State/local government. Includes State, Federal, or local-government-owned research organizations.

(v) *Item 17—Award Outside U.S.* Enter "L" for an award to a source outside the U.S. Enter "M" for an award to a source inside the U.S., if the principal place of performance will be outside the U.S. When this item is coded "L" or "M," the PPC code entered in item 14 of the NASA Form 507 must be from the "work outside U.S." category of the PPC matrix.

(w) *Item 18—Extent of competition (1 position).* Enter the appropriate code from the following list (except for non-new-work (within-scope) modifications):

Code	Extent of competition
2	Sealed Bid. Award results from acceptance of a bid in response to a formal invitation for bids or from sealed bidding following an evaluation of technical proposals (two-step sealed bidding). (See FAR part 14.)
3	Competed action—SEB. Competitive offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially; award is based on price, design, or technical competition; and Source Evaluation Board (SEB) procedures are used to evaluate the proposals (see FAR 15.506–2). This code shall also be used if Architect-Engineer Selection Board procedures are used (see FAR 36.603–2).
4	Other competed action. Competitive offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially; award is based on price, design, or technical competition; and Source Evaluation Board procedures are not used to evaluate the proposals.
5	Noncompetitive follow-on to competed action. The procurement is for the continued development or production of a major system or highly specialized equipment, including major components thereof, that is considered available only from the original source, and it is likely that award to any other source would result in (1) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (2) unacceptable delays in fulfilling NASA's requirements (see FAR 6.302–1(b)(2)).
6	Other not competed. Only one offer is solicited and only one offer is received capable of satisfying the Government's requirements wholly or partially; the work involved is not a follow-on procurement reportable under code 5 above. Include awards resulting from unsolicited proposals in this category.

(x) *Item 19—Type of service or product (4 positions).* Enter the code indicating the principal type of effort or end item obtained under the contract. If more than one classification applies to the procurement, enter the one accounting for the largest dollar volume of procurement. Codes have been established to identify research and development (R&D) procurements, service contracts, and supply and equipment contracts. These codes may be found in the FPDS Product and Service Codes manual located in the procurement administrative office at each NASA installation. Information on the most frequently used R&D codes is presented below.

(1) R&D procurement—R&D codes are used for—

(i) All contracts for R&D work, and

(ii) Most, but not all, contracts with educational institutions.

(2) Space R&D (first 3 digits)—If the procurement involves space R&D, use one of the following for the first three digits of the four-position code:

R&D code [1]	Type of R&D procurement
AR1	Aeronautics & space technology.
AR2	Space science & applications.
AR3	Space flight.
AR4	Space operations.
AR6	Space station.
AR7	Commercial programs.
	AR9 Other space.

[1] See subparagraph (aa) (3) of this section.

(3) Space R&D (fourth digit)—If the procurement involves space R&D, use one of the following for the fourth digit of the four position code. The terms in this list are explained in the following subdivisions:

Code	Meaning
1	Basic research.
2	Applied research and exploratory development.
3	Advanced development.
4	Engineering development.
5	Operational systems development.
6	Management and support.

(i) Basic Research—Includes all scientific effort and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, social, and life sciences related to long-term national needs. It provides fundamental knowledge ultimately required for the solution of social, economic, political, physical, or military problems. It forms a part of the base for subsequent applied research and exploratory and advanced development in the various disciplines, and new or improved functional capabilities.

(ii) Applied Research and exploratory development—Includes all effort directed toward the solution of specific problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated breadboard hardware, study, programming, and planning efforts. It thus includes investigations and minor development effort. The dominant characteristic of this category of effort is that it be

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pointed toward specific problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

(iii) Advanced development—Includes all effort directed toward projects which have moved into the development of hardware for test. The prime result of this type of effort is proof of design concept and/or prototype.

(iv) Engineering development—Includes those projects in full-scale engineering development for Government use but which have not yet received approval for production or had production funds included in the budget submission for the current or subsequent fiscal year. This area is characterized by major line-item projects.

(v) Operational systems development—Includes those projects still in full-scale engineering development but which have received approval for production, or production funds have been included in the budget submission for the current or subsequent fiscal year.

(vi) Management and support—Includes all effort directed toward support of installations or operations required for general research and development. Included would be construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance and support of test aircraft, equipment, or ships. Costs of laboratory personnel, either in-house or contractor, would be assigned to appropriate projects or program areas above.

(y) *Item 20—Physically complete (1 position).* Enter "Y" (yes) if the contract is physically complete, i.e., after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Government (see FAR 4.804-4). Also enter the date that the contract is physically completed. Otherwise, this field should be left blank.

(z) *Item 21—Labor surplus area award (1 position).* "Y" or "N" to indicate whether the award is to a concern in a labor surplus area (see FAR subpart 20.1).

(aa) *Item 22—FSS/Indefinite-delivery/ BOA contract no. (15 positions).* Enter the Federal Supply Schedule (FSS), indefinite-delivery, or basic ordering agreement (BOA) contract number under which a delivery order has been placed if Item 15 (Kind of Action) is coded 23, 24, 25, or 26.

(bb) *Item 23—Description of contract/modification (narrative).* Enter a brief description of the end item or services being procured. For modifications, enter a brief description of the purpose.

(cc) *Item 24—CICA applicability (1 position).* (1) Pre-CICA: Code 1 Enter if the contract action is a new contract resulting from a solicitation issued before April 1, 1985, irrespective of the award date. All within-scope modifications to such contracts and new-work modifications resulting from solicitations issued before April 1, 1985, are to be reported by this code.

(2) Post CICA: Code 2 Enter if the contract action is a new contract resulting from a solicitation issued on or after April 1, 1985. All modifications to such contracts are to be reported by this code.

(dd) *Item 25—Proposed procurement synopsized (1 position).* Enter "Y" if the procurement was synopsized prior to award in the Department of Commerce's Commerce Business Daily. Enter "N" if the procurement was not synopsized, except enter "U" if the procurement was not synopsized because of urgency.

(ee) *Item 26—Contract type (2 positions).* Enter the code that identifies the type of contract from the following list:

Code	Contract type
01	Fixed-Price, Firm (FAR 16.202 and 16.207). (Include Firm Fixed-Price, level-of-effort term contracts in this category.)
02	Fixed-Price, Redetermination (FAR 16.205).
03	Fixed-Price with Economic Price Adjustment (FAR 16.203).
04	Fixed-Price Incentive (FAR 16.204).
05	Cost (No Fee) (FAR 16.302).
06	Cost-Sharing (FAR 16.303). (The estimated cost reported shall include only the Government's share.)
07	Cost-Plus-Fixed-Fee (FAR 16.306).
08	Cost-Plus-Incentive-Fee (FAR 16.404-1).
09	Time-and-Materials (FAR 16.601).
10	Labor-Hour (FAR 16.602).

Code	Contract type
12	Cost-Plus-Award-Fee (FAR 16.404-2).

(2) Combination contract types shall be reported as follows:

(i) Where the contract has one type of incentive arrangement applying to cost performance and another to technical and/or schedule performance, report the contract type assigned to the cost-incentive feature; e.g., a contract providing a cost-plus-incentive-fee arrangement on cost and an award fee arrangement on technical and/or schedule performance will be reported as "Code 08—Cost-Plus-Incentive-Fee."

(ii) Where one or more items of work are priced exclusively under one of the arrangements coded above, with one or more additional items priced exclusively under another such arrangement, report the contract type in accordance with the code assigned to the arrangement under which the predominate dollar amount will be spent.

(ff) *Item 27—No. or offerors solicited (3 positions).* Enter the number of firms to which soliciations were provided.

(gg) *Item 28—Number of offers received (3 positions).* Enter the actual number of offers received in response to the solicitation.

(hh) *Item 29—Solicitation procedures (1 position).* This item pertains to the requirements of FAR subparts 6.1 (Full and Open Competition), 6.2 (Full and Open Competition After Exclusion of Sources), and 6.3 (Other Than Full and Open Competition), with the exception of the statutory authorities for other than full and open competition (subpart 6.3), which are reported in Item 30. Codes "A" through "L" designate the competition alternatives described in FAR part 6. Delivery-order contract actions under indefinite-delivery contracts shall be reported the same as the initial contract when the following criterion, in FAR 6.001(e), is met: They are orders placed under indefinite-delivery contracts that were entered into pursuant to FAR part 6, and either the contract was awarded under subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order, or the contract was awarded under subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

(1) Code A—Full and open competition sealed bid is entered when the sealed bidding (see FAR 6.401(a)) method of contracting was used.

(2) Code B—Full and open competition—competitive proposal is entered when the FAR part 15, Contracting by Negotiation, procedures were used for a competitive solicitation.

(3) Code C—Full and open competition—combination is entered when any combination of competitive procedures (e.g., two-step sealed bidding) was used (see FAR 6.102(c)).

(4) Code D—Architect-engineer is entered if the action resulted from selection of sources for architect-engineer (A&E) contracts in accordance with Public Law 92-582 and procedures in FAR subpart 36.6 (see FAR 6.102(d)(1)). The selection of a potential A&E contractor is made by an A&E Evaluation Board conducted in accordance with 41 U.S.C. 541 et seq. This selection process is considered a competitive procedure and shall be reported as a competitive award. When award is an A&E contract and was a result of a small business set-aside or labor surplus area set-aside, use code K in lieu of this code.

(5) Code E—NASA Research Announcement/Announcement of Opportunity is entered if the action resulted from competitive selection of basic research proposals as a result of:

(i) A broad agency announcement (NASA Research Announcement or Announcement of Opportunity) that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs and

(ii) A peer or scientific review (see FAR 6.102(d)(2)).

(6) Code F—Multiple-award schedule is entered if the action is an order issued against a multiple-award schedule using the procedures in FAR 8.405-1 (see FAR 6.102(d)(3)). This code shall be used for multiple-award schedule contracts (mandatory or op-

tional). This code may be used for ADP procurements, unless the solicitation utilized make-or- model specifications. Use of the multiple-award schedule program is considered to be a competitive procedure because competitive procedures were used by GSA to make the basic multiple-award schedule contract awards under 41 U.S.C. 259(b)(3)(A). For reporting purposes, an order issued against a multiple-award schedule shall be reported as a competitive award.

(7) Code G—Alternate source—reduced cost is entered if the action was taken pursuant to FAR 6.202(a)(1), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition of such supplies or services.

(8) Code H—Alternate source—mobilization is entered if the action was taken pursuant to FAR 6.202(a)(2), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization.

(9) Code J—Alternate source—engineering/R&D capability is entered if the action was taken pursuant to FAR 6.202(a)(3), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(10) Code K—Set-asides is entered if the action resulted from use of procedures for set-asides pursuant to FAR 6.203. This includes small business set-asides, labor surplus area set-asides, or combinations thereof. This code also includes contract actions under the Small Business Innovation Research (SBIR) Program established under Public Law 97-219.

(11) Code L—Other than full and open competition is entered if the action resulted from use of other than full and open competition pursuant to 10 U.S.C. 2304(c). The conditions or exceptions permitting contracting without providing for full and open competition are prescribed in FAR 6.302. Enter this code for noncompetitive awards made under the authority of section 8(a) of the Small Business Act (see FAR subpart 19.8). This code shall also be used for all ADP procurements where the solicitation utilized make-and-model specifications.

(ii) *Item 30—Authority for other than full and open competition.* When Item 29 is coded "L," this item must be completed. Enter the applicable code from the categories listed below. This item identifies the solicitation process and not the extent of competition obtained.

(1) Code A—Unique source is entered when the contract action is under 10 U.S.C. 2304(c)(1) and the agency's minimum needs can be satisfied only by unique supplies or services available from only one source or only one supplier with unique capabilities (see FAR 6.302-1(b)(1)).

(2) Code B—Follow-on contract is entered when the contract action is under 10 U.S.C. 2304(c)(1) and it is likely that the award of follow-on contracts must be to the original source because award to any other source would result in:

(i) Substantial duplication of cost to the Government that is not expected to be recovered through competition or

(ii) Unacceptable delays in fulfilling the agency's requirements (see FAR 6.302-1(a)(2)(ii)).

(3) Code C—Unsolicited research proposal is entered when the contract

action is under 10 U.S.C. 2304(c)(1) as the result of acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which:

(i) Is not otherwise available to the Government and

(ii) Does not resemble the substance of a pending competitive acquisition (see FAR 6.302-1(a)(2)(i)).

(4) Code D—Patent/data rights is entered when the contract action is under 10 U.S.C. 2304(c)(1) because the existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances make the supplies and services available from only one source (see FAR 6.302-1(b)(2)).

(5) Code E—Utilities is entered when:

(i) The contract action is under 10 U.S.C. 2304(c)(1) when acquiring electric power or energy, gas (natural or manufactured), water, or other utility services and circumstances dictate that only one supplier can furnish the service or

(ii) The contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system (see FAR 6.302-1(b)(3)).

(6) Code F—Standardization is entered when the contract action is under 10 U.S.C. 2304(c)(1) because the agency head has determined under the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items and only one source is available (see FAR 6.302-1(b)(4)).

(7) Code G—Only one source—other is entered when the contract action is under 10 U.S.C. 2304(c)(1) to a single source and codes "A" through "F" above do not apply (see FAR 6.302-1(b)).

(8) Code H—Urgency is entered when the contract action is under 10 U.S.C. 2304(c)(2) because:

(i) An unusual and compelling urgency precludes full and open competition and

(ii) Delay in award of a contract would result in serious injury, financial or other, to the Government (see FAR 6.302-2(b)).

(9) Code J—Mobilization is entered when the contract action is under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization (see FAR 6.302-3(b)(1)).

(10) Code K—Essential R&D capabilities is entered when the contract action is under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center (see FAR 6.302-3(b)(2)).

(11) Code L—International agreement is entered when the contract action is under 10 U.S.C. 2304(c)(4) because full and open competition is precluded by (i) the terms of an international agreement or treaty between the United States and a foreign government or international organization or (ii) the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services (see FAR 6.302-4).

(12) Code M—Authorized by statute is entered when the contract action is under 10 U.S.C. 2304(c)(5) because a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source (see FAR 6.302-5(a)(2)(i)). This code should be used for noncompetitive 8(a) awards.

(13) Code N—Authorized resale is entered when the contract action is under 10 U.S.C. 2304(c)(5) for a brand-name commercial item for resale through commissaries or other similar facilities (see FAR 6.302-5(a)(2)(ii)).

(14) Code P—National security is entered when the contract action is under 10 U.S.C. 2304(c)(6) because disclosure of the Government's needs would compromise the national security (see FAR 6.302-6).

(15) Code Q—Public interest is entered when the contract action is under 10 U.S.C. 2304(c)(7) because the

agency head has determined that full and open competition is not in the public interest in the particular acquisition concerned (see FAR 6.302-7).

(jj) *Item 31—Labor statutes* (1 position). Enter the appropriate code, in accordance with the provisions of the contract, from the following list:

Code	Statutory requirements
N	Not subject to statutory requirements listed below.
1	Subject to Walsh-Healey Act, manufacturer (FAR 22.606-1).
2	Subject to Walsh-Healey Act, regular dealer (FAR 22.606-2).
3	Subject to Service Contract Act (FAR subpart 22.10).
4	Subject to Davis-Bacon Act (FAR 22.403-1).

(kk) *Item 32—Standard Industrial Classification (SIC) Code (4 positions).* Enter the code identifying the industry category within which the principal (determined by the predominance of dollars awarded) product produced or distributed or services rendered would best fit. Industry categories are published in the Standard Industrial Classification Manual maintained and issued by the Office of Management and Budget (OMB). A listing of the SIC codes, without the detailed lists of products and services falling within each category, can be found at FAR 19.102(g).

(ll) *Item 33) Contract administration delegated* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether any contract administration functions have been delegated to another Government agency (see FAR subpart 42.2).

(mm) *Item 34—Preference program.* Report the code that represents the preference program used in making the award. Report Code H if no preference program applies or the preference program is not otherwise listed.

(1) Code A—Directed to sheltered workshops. Report this code for an award to a workshop for the blind or a workshop for the other severely handicapped pursuant to FAR subpart 8.7.

(2) Code B—8(a) Program Report this code for actions with the Small Business Administration pursuant to FAR subpart 19.8.

(3) Code C—Combined labor surplus/small business set-aside. Report this code for a combined labor surplus area and small business set-aside award made to a small business concern pursuant to FAR subpart 19.5.

(4) Code D—Small business set-aside. Report this code for a small business set-aside (including Small Business Innovation Research (SBIR)) award made pursuant to FAR subpart 19.5.

(5) Code E—Labor surplus area set-aside. Report this code for a labor surplus area set-aside award made pursuant to FAR subpart 20.2.

(6) Code F—Tie-bid preference. Report this code for all tie-bid preference awards (see FAR 19.202-3) made pusuant to FAR subpart 19.5.

(7) Code H—No preference program. Report this code if the award is not made pursuant to a preference program, or if the preference program is not listed above.

(nn) *Item 35—Advisory/Assistance services contract* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the contract is for advisory and assistance services (formerly known as consulting services).

(oo) *Item 36—Support services type contract (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract is for support services. Compare the following explanations with the procurement in question in determining how to code this item:

(1) In-house contract support—(i) Provides a service to the installation;

(ii) Is performed on or near the installation;

(iii) Is continuous in nature;

(iv) Is not provided by the prime product development contractor when the work is for the purpose of fulfilling the prime contract;

(v) Is characterized as that support necessary because of the on- or near-site population and activated facilities (housekeeping maintenance and operation function) and the effort necessary to support the research, development, or test efforts the installation performs in-house; and

(vi) Excludes—(A) Construction, alteration, and repair; (B) purchase and incidental services; (C) prime product development contracts; (D) operations support contracts; and (E) tenants.

(2) Operations support contracts. This is work performed on- or near-site because of the location of major operations facilities. (This is the effort associated with carrying out mission operations; it is done on-site because that is where the supported facility is—a launch pad, mission control center, or tracking station.) Tracking operations support contractors are subdivided as on-site (at or near GSFC or JPL) or off-site.

(i) Operations support contractors are restricted to major national operations facilities and the following foreign and domestic tracking network stations: (A) JPL-Mission Control Center (DSN); (B) Goldstone; (C) Mesa Antenna Range; (D) JSC-Mission Control Center (MSF); (E) GSFC-Mission Control Center (STDN); (F) World-Wide Network Tracking Stations; (G) OTDA-Operations Funded Support; (H) KSC-Launch Complex 39 and related support facilities.

(ii) Operations support includes support funded by STS operations at MSFC, KSC, and JSC.

(3) Purchased and/or incidental services.

(i) Purchased services are those obtained by—(A) Delivery orders against Federal Supply Schedules; (B) purchase orders; (C) blanket purchase agreements; or (D) basic ordering agreements not exceeding $25,000 per order.

(ii) Incidental services are—(A) Described in terms of the labor required to perform the services; (B) procured from vendors that provide similar services to the local community; (C) those for which the vendor provides all or a substantial amount of the capital investment required to perform the work under the contract; and (D) rendered under small contracts generally not exceeding four-to-five staff-years per year.

(pp) *Item 37—Cost Accounting Standards clause (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract contains the Cost Accounting Standards clause (see FAR 30.201-4).

(qq) *Item 38—New technology or patent rights clause (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether a new technology or patent rights clause is included in the contract. (See 1827.373.) A "Y" entry for contracts with small businesses, nonprofit organizations, and educational institutions will indicate a patent rights clause. A "Y" entry for contracts with large businesses will indicate a new technology clause.

(rr) *Item 39—Subcontracting program plan (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract contains a subcontract plan requiring the contractor to furnish the information prescribed on Standard Forms 294 and 295 (see 1804.674 and FAR 19.702). Enter "W" (waiver) when there are no subcontracting opportunities, for contracts performed entirely outside the United States, and for GSA Federal Supply Schedule contracts containing plans. Use Code "Y" for corporate plans with individual contract goals.

(ss) *Item 40—SBIR award (1 position).* Enter Code "N" (no) if the contract action is not in support of the Small Business Innovation Research (SBIR) Program (Pub. L. 97-219). Enter Code "1" if the contract action is related to a Phase I contract in support of the program. Enter Code "2" if the contract action is related to a Phase II contract in support of the program.

(tt) *Item 41—Woman-owned small business (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the business concern is a woman-owned small business (see FAR subpart 19.9).

(uu) *Item 42—Contract for foreign government or international organization.* Enter "Y" (yes) if a foreign government or international organization is bearing any part of the cost of the action. Otherwise, enter "N" (no).

(vv) *Item 43—Management reporting requirements (MRR): correlated cost and performance data reporting (1 position).* Enter one of the following codes (see NHB 9501.2):

Code	Reporting required
N	None required.
2	NASA Form 533M only.
3	NASA Forms 533M and 533Q.
4	NASA Forms 533M and 533P.
5	NASA Forms 533P and 533Q.
6	NASA Forms 533M, 533P, and 533Q.

(ww) *Item 44—Management reporting requirements (MRR): property and space hardware reporting (1 position).* Enter one of the following codes (see FAR 45.505-11):

Code	Reporting required
N	None required.
2	NASA Form 1018, without space hardware.
3	NASA Form 1018, with space hardware.

(xx) *Item 45—Trade data (3 blocks).* (1) First block—number of bidders offering foreign item (1 position). Enter one numeric code (0-9) to indicate the number of firms that offered foreign end products. An entry is required regardless of whether the Buy American Act is invoked or not. If none, enter "0". If 9 or more, enter "9".

(2) Second block—Percent difference (2 positions). If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percentage difference between the award price and that of the low firm offering a foreign end product, computed before application of the Buy American Act differential, i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number. If the evaluation factor under the Buy American Act is not used, enter "00".

(3) Third block—Country of manufacturer (2 positions). If the product is manufactured, mined, or grown in the United States (the 50 states and the District of Columbia) or the service is performed by a U.S. contractor, enter "US". If the product is manufactured, mined, or grown in a foreign country, enter the code from FIPS PUB 10-3 of that country/area. In the case of a service, if the service is performed by a foreign contractor, enter the code from FIPS PUB 10-3 of that country/area. This publication may be obtained from the Headquarters Office of Procurement, Procurement Management Division (Code HM).

(yy) *Item 46—Demonstration test program (1 position).* Enter "Y" or "N" to indicate whether the award is a new contract awarded to a U.S. business concern as a result of a solicitation issued on or after January 1, 1989, under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10 and NFS 18-19.10). This item must be completed for awards to large businesses as well as for awards to small businesses.

(zz) *Item 47—Emerging small business (1 position).* Complete this item only if Item 46 is coded "Y." Enter "Y" or "N" to indicate whether the contractor represents that it is an emerging small business concern (see FAR 19.1002 for definition of emerging small business).

(aaa) *Item 48—Emerging small business reserve award (1 position).* Complete this item only if Item 47 is coded "Y." Enter "Y" or "N" to indicate whether the contract award was reserved for emerging small business concerns.

(bbb) *Item 49—Size of small business (1 position).* Complete this item only if Item 46 is coded "Y" and the award is to a small business. Enter the code that corresponds to the range of the number of employees or the range of the average annual gross revenue for the small business contractor receiving the award as represented by the contractor in response to the solicitation.

(ccc) *Item 50—Effective date.* Enter the year, month, and day (two numerics each) of the contract's effective date.

(ddd) *Item 51—Security code (1 position).* Enter "Y" or "N" to indicate whether Defense Industrial Security clearances are required during contract performance.

(eee) *Item 52—Equipment code (1 position).* Enter "Y" or "N" to indicate whether the contract will involve government furnished or contractor acquired property.

(fff) *Item 53—Administrator code (3 positions).* Enter the code which identifies the individual at the contracting installation responsible for administration of the contract.

(ggg) *Item 54—Contracting officer code (3 positions).* Enter the code which identifies the contracting officer assigned to the contract.

(hhh) *Item 55—Negotiator code (3 positions).* Enter the code which identifies the individual responsible for negotiating the contract.

(iii) *Item 56—COTR name (15 positions).* Enter the name of the Contracting Officer's Technical Representative (COTR) for the contract.

(jjj) *Item 57—Organization code (5 positions).* Enter the organization code for the responsible technical organization for which the contract has been awarded.

(kkk) *Item 58—Contract fund code (1 position).* Enter the appropriate code to indicate whether the contract is fully funded, incrementally funded, or unfunded.

(lll) *Item 59—Reason not small business (2 positions).* Enter the appropriate two digit code to identify the reason the contract was not awarded to a small business concern.

(mmm) *Item 60—Center unique.* This field may be used at the discretion of individual centers to collect data not elsewhere reported on the form (e.g., taxpayer identification numbers). Otherwise leave this item blank.

(nnn) *Item 61—Cancellation date (6 positions).* If it is necessary to cancel a previously executed modification, enter the year, month, and day (two numerics each) of such cancellation.

(ooo) *Item 62—Total contract value including options.* Enter the definitized contract value (including maximum potential fee or profit) plus the value of any options (including maximum potential fee or profit) available in the contract. Round entries to the nearest whole dollar.

(ppp) *Item 63—Estimated cost or fixed price (11 positions).* Enter the estimated cost or fixed price for all new awards. For modifications, enter only the increase or decrease effected by the respective modification. For cost-reimbursement contracts, enter the estimated cost, exclusive of fee. For fixed-price contracts, enter the total fixed price, including the negotiated profit. For time-and-materials and labor-hour contracts, enter the total estimated contract price, including profit. Round all entries to the nearest whole dollar. Do not report amounts for priced options that have not been exercised in this field.

(qqq) *Item 64—Fee (11 positions).* This item pertains to cost-reimbursement contracts only. For new awards, enter the definitized negotiated fee, broken down into the types of fee indicatd on the form. For modifications, enter only the increase or decrease effected by the respective modification. For incentive contracts, enter the target fee. For award-fee contracts, enter the base fee, the maximum available award fee. Also enter the total of the different types of fees reported. Round entries to the nearest whole dollar.

(rrr) *Item 65—Action obligation.* Enter the dollar amount obligated (increase or decrease) of the reported action. Report obligations for cost and fee separately and enter the total obligations reported. Round entries to the nearest whole dollar.

(sss) *Item 66—Funded through date (6 positions).* For incrementally funded contracts, enter the date through which the contract is funded.

[54 FR 53623, Dec. 29, 1989]

1804.671-5 [Reserved]

1804.671-6 Special procurement placement codes (PPC's) for certain procurements.

(a) The accounting copies for all procurements of $25,000 or less from "Disadvantaged Business Firms-Direct" shall be coded with the second letter "M" in the PPC; e.g., BM or KM.

(b) The accounting copies for all procurements of $25,000 or less from "Women-Owned Business Firms" shall be coded with the second letter "W" in the PPC; e.g., BW or KW.

(c) All procurement awards over $25,000 and the accounting copies for procurement actions of $25,000 or less (no NASA Form 507 is required) placed through the Small Business Administration with a disadvantaged business firm under section 8(a) of the Small Business Act shall be coded with PPC "PS."

(d) All NASA funded awards under the Small Business Innovation Research (SBIR) Program shall be coded with PPC "HS". SBIR awards funded by Agencies other than NASA shall be coded with PPC "GF".

(e) The accounting copies for all procurements of $1,000 or less shall be coded with PPC's, CC, EC, HC, IC, LC, MC, OC, PC, VC, or ZC.

[54 FR 28196, July 5, 1989, as amended at 54 FR 39369, Sept. 26, 1989]

1804.671-7 Procurement placement codes (PPC's).

Table 1804-1 is the PPC matrix containing alpha codes required for coding all procurements. The codes apply to Item 14 on NASA Form 507 and are used to identify post-CICA procurements, the type of solicitation process used, and the extent of competition for the procurement.

1804.672 Report on NASA Subcontracts clause.

(a) NASA Form 667, Report on NASA Subcontracts, is used to obtain information relating to the geographic distribution of subcontracts awarded under certain NASA contracts.

(b) The clause at 1852.204-70, Report on NASA Subcontracts, shall be inserted in all NASA contracts of $500,000 or more or when a modification increases the amount of a contract to $500,000 or more. In the latter instance, the clause will be inserted at the time of the modification but will not be retroactive so as to require the reporting of subcontracts awarded previously.

1804.674 Subcontracting report.

Standard Forms 294, Subcontracting Report for Individual Contracts, and 295, Summary Subcontract Report, are used to obtain data to provide a basis for evaluating the effectiveness and extent of subcontracting programs involving small and small disadvantaged business concerns pursuant to the Small Business Act of 1958, as amended by Pub. L. 95-507. (See FAR 19.708(b).)

1804.675 NASA contractor financial management reporting.

When financial management reporting on the NASA Form 533 series of reports is required (see NMI 9501.1, "NASA Contractor Financial Management Reporting System"), this requirement shall be detailed in the procurement request, and the reporting shall be required by inclusion of the appropriate clause or clauses prescribed in 1804.675-1.

1804.675-1 Contractor financial management reporting.

(a) The clause at 1852.204-71, NASA Contractor Financial Management Reporting, shall be used when any of the NASA Form 533 series of reports are required from the contractor.

(b) The clause at 1852.204-72, NASA Contractor Financial Management Reporting (Performance Analysis Report), shall be used in conjunction with the clause at 1852.204-71 when the optional Monthly Performance Analysis Report is also required from the contractor.

1804.676 Committee on Academic Science and Engineering (C.A.S.E.) Report.

NASA Form 1356, C.A.S.E. Report on College and University Projects, shall be prepared for awards to nonprofit institutions of higher education or to nonprofit institutions that are operationally affiliated or integrated with an educational institution. Information on this form is used to produce reports required by the National Science Foundation and to respond to inquiries. Submission is required regardless of instrument type (contract, grant, or cooperative agreement) and type of proposal (solicited or unsolicited). Instructions appear on the form itself and constitute the detailed guidance for preparation and submission. The form, which is either included with the acquisition package or initiated by the contracting office, shall be completed, reviewed, and promptly forwarded upon award to the Educational Affairs Division, University Programs Office, NASA Headquarters (Code XEU).

TABLE 1804-1

POST-CICA PROCUREMENT PLACEMENT CODE MATRIX

		SOLICITATION PROCESS																
	TYPE OF PROCUREMENT REPORTING $ LEVELS: IPAR REQUIRED (NF-507) $1 AND OVER: ALL CONTRACTS, GRANTS, AGREEMENTS AND CONSULTANT SERVICE PURCHASE ORDERS. $25K & OVER: AWARDS TO OTHER GOVERNMENT AGENCIES AND DELIVERY ORDERS FOR ORDERING SUPPLIES AND SERVICES. MODIFICATIONS TO CONTRACTS.		COMPETITION AFTER EXCLUSION OF SOURCES		OTHER THAN FULL AND OPEN COMPETITION 10 U.S.C. 2304(c)													
		FULL AND OPEN COMPETITION	ALTERNATIVE SOURCE	SET ASIDES	(1) ONLY ONE RESP SOURCE	(2) URGENCY	(3) MOBILIZATION OR R&D	(4) INTERNATIONAL AGREEMENT	(5) AUTHORIZED BY STATUTE	(6) NATIONAL SECURITY	(7) PUBLIC INTEREST	GRANTS	SPACE ACT AGREEMENTS	COOPERATIVE AGREEMENTS	INTRAGOVERNMENTAL	SMALL PURCHASES LESS THAN $1,000	SMALL PURCHASES MORE THAN $1,000	MISCELLANEOUS
EXTENT OF COMPETITION	**LARGE BUSINESS**																	
	Sealed Bid—Non FSS	AX	AE	AF	AL	AO	AP	AQ	AU	AV	AZ							
	Sealed Bid—FSS	AY																
	Neg. Competitive—Non FSS	BX	BE	BF	BL	BO	BP	BQ	BU	BV	BZ					CC	BC	
	Neg. Competitive—FSS	BY																
	Neg. Noncompetitive				DL	DO	DP	DQ	DU	DV	DZ					EC	DC	
	SMALL BUSINESS																	
	Sealed Bid—Non FSS	FX	FE	FF	FL	FO	FP	FQ	FU	FV	FZ							
	Sealed Bid—FSS	FY																
	Set-Asides —Negotiated			GF														
	SBIR			HS														
	Neg. Competitive—Non FSS	KX	KE		KL	KO	KP	KQ	KU	KV	KZ					HC	KC	
	Neg. Competitive—FSS	KY																
	Neg. Noncompetitive				NL	NO	NP	NQ	NU	NV	NZ					IC	NC	
	SBA 8(a)								PS									
	UNIVERSITIES																	
	Sealed Bid	QX			QL	QO	QP	QQ	QU	QV	QZ							
	Neg. Competitive	RS	RE		RL	RO	RP	RQ	RU	RV	RZ					LC	RC	
	Neg. Noncompetitive				SL	SO	SP	SQ	SU	SV	SZ	ST	SW	SX		MC	SC	
	OTHER NON-PROFIT																	
	Sealed Bid	UX			UL	UO	UP	UQ	UU	UV	UZ							
	Neg. Competitive	TX	TE		TL	TO	TP	TQ	TU	TV	TZ					OC	TC	
	Neg. Noncompetitive				WL	WO	WP	WQ	WU	WV	WZ	WT	WW	WX		PC	WC	
	WORK OUTSIDE U.S.																	
	Sealed Bid	ZX	ZE	ZD	ZL	ZO	ZP	ZQ	ZU	ZV	ZZ							
	Neg. Competitive	XX	XE	XD	XL	XO	XP	XQ	XU	XV	XZ					VC	XC	
	Neg. Noncompetitive				YL	YO	YP	YQ	YU	YV	YZ					ZC	YC	
INTRAGOVERNMENTAL															98			
MISCELLANEOUS			(Reserved for Accounting Transactions—Do Not Cite on Proc. Documents)															99

All small purchase order awards less than $1,000 (No NF-507 required) shall cite one of the codes listed under "Small Purchases Less Than $1,000" on copy submitted to Accounting.

All small purchase order awards more than $1,000 but under $25,000 (No NF-507 required) shall cite one of the codes listed under "Small Purchases More Than $1,000" on copy submitted to Accounting.

All small purchase order awards under $25,000 (No NF-507 required) to "Disadvantaged Business Firms—Direct" shall cite PPC with second letter "M" on copy submitted to Accounting.

All small purchase order awards under $25,000 (No NF-507 required) to "Women-owned Firms" shall cite PPC with a second letter "W" on copy submitted to Accounting.

Subpart 1804.8—Contract Files

1804.802 Contract files.

The cognizant NASA contracting office shall maintain the contract administration file unless contract administration functions have been delegated under FAR Subpart 42.1.

1804.802-70 Handling of classified material.

When the bulk of the material concerning a contract is unclassified, classified material relating to that contract shall be maintained in a separate file folder and container, and the unclassified folder shall be marked or cross-referenced to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any document in the folder.

1804.802-71 Filing of documents.

(a) Documents relating to a specific contract or described in FAR 4.803(a), (b), or (c) should normally be placed in chronological order in an "OFFICIAL FILE" folder or folders. Each folder shall be marked or labeled with the contract number and, when more than one folder is required for the same contract, with information as to the file segment. However, documents regarding quality assurance and property may be maintained in separate files to facilitate possible early disposal. Other identifying data, such as the contractor's name, should be added only when needed to facilitate filing and locating.

(1) When a single folder is used, basic procurement documents and all modifications ordinarily should be filed on the left side and all other material on the right. As volume warrants, a contract file may be subdivided further, either within the folder or by using additional folders, as appropriate (e.g., by pre-contract documents, basic contract, contract modifications, termination documents, quality assurance and progress and production surveillance, property administration and plant clearance, termination documents, and general correspondence).

(2) When it is impractical to file certain documents in the official contract folder because of their bulk or use, they may be maintained separately in other suitable containers but shall be handled as "OFFICIAL FILES" and cross-referenced in the contract file.

(3) Documents relating to more than one contract may be filed in one contract file and cross-referenced in the others; otherwise enough copies must be reproduced to provide for filing one in each related contract file. Other pertinent documents of a more general nature may be filed separately in the contractor "general" file and cross-referenced in the contract file.

(b) Documents described in FAR 4.801(c)(3) and relating generally to the contractor rather than to a specific contract shall be placed in a folder labeled with the contractor's name. When necessary, additional folders may be used and the material subdivided by subject (e.g., general, production, termination, property control, and performance).

1804.802-72 Arrangement of files.

(a) Contract file folders normally should be arranged numerically by contract serial number. When special circumstances warrant, contract folders may be arranged alphabetically by contractor's name.

(b) Contractor "general" file folders shall be arranged alphabetically by name of the contractor.

1804.803 Contents of contract files.

1804.803-71 Checklist.

NASA Form 1098, Checklist for Contract Award File Content, shall be used as the "top page" in contract files. The form is intended as a reminder of the required or most important documents in the file. It also provides a uniform tab-numbering system. Only the most frequently occurring documents are listed. Therefore, space is provided for writing in additional documents applicable to specific contracts or resulting from local guidelines. The user is cautioned that completion of the NASA Form 1098, in and of itself, does not establish that all contract actions have been taken and/or properly documented.

1804.804 Closeout of contract files.

1804.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Upon receiving the NASA Form 1611, Contract Completion Statement, from the contract administration office and complying with FAR 4.804-2(b), the contracting officer shall complete Item 10 of the NASA Form 1611.

(b) The date in Item 9d of NASA Form 1611 shall be used as the closeout date for file purposes, except that the date in Item 10e shall be used when completion of any pending significant contracting office action extends more than 3 months beyond the date shown in Item 9d.

1804.804-5 Detailed procedures for closing out contract files.

(a) When the contracting office retains contract administration (excluding small purchases), it shall use, as necessary, NASA Form 1612, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record, to ensure that the applicable actions at FAR 4.804-5(a) are completed.

(b) Upon completion of the forms specified in paragraph (a) of this section, the contracting officer shall use NASA Form 1611, Contract Completion Statement, for all contracts exceeding $25,000. This will satisfy the requirements of FAR 4.804-5(b). For contracts $25,000 and under, the contracting officer shall file a signed statement that all contract actions are complete.

1804.805 Disposal of contract files.

See NHB 1441.1, NASA Records Disposition Handbook.

1804.805-70 Review, separation, and retirement of contract files.

(a) *Review of contract case and cross reference locator files.* Upon determination of contract completion under the procedures outlined in 1804.804, each office shall review all files pertaining to the individual contract, as follows:

(1) Duplicate or working contract case file. Remove any original or official file copies of documents and place them in the appropriate official file; destroy immediately any remaining material or segregate and mark it for early disposal.

(2) Official contract case file. Remove the folders for completed contracts from the active file series, mark each folder or folder tab with "Completed (Date)", and place the folder in a completed (inactive) contract file series. Separate series should be established for contracts of $25,000 or less and for contracts of more than $25,000, to facilitate later disposal.

(3) Cross reference/locator files. Remove any contract cross-reference data forms relating to the completed contract, mark each folder with "Completed (Date)", and place each folder in a completed (inactive) cross-reference/locator file series for later disposal.

(b) *Review of contractor "general" files.* Each office shall review contractor "general" files at least once annually and remove documents that—

(1) Are obsolete or superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of a contractor's current or future capability, performance, or programs, and documents relating to a contractor that is no longer a possible source of supplies, services, or technical assistance) and dispose of the documents as authorized in 1804.805; or

(2) Pertain only to completed contracts. Place those files that are not routine in nature in inactive files for later disposal, and immediately dispose of routine documents as authorized in NHB 1441.1, NASA Records Disposition Handbook.

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.

This subpart contains policies and procedures applicable to the transfer of contracts between NASA installations.

1804.7001 Definition.

Transfer of a contract, as used in this subpart, means that process whereby a contract and all future responsibility for a contract held by one installation are transferred or reassigned in writing to another installation.

1804.7002 Restrictions.

Requests for permission to transfer a contract to another NASA installation, when considered advisable by the installation director, shall be addressed to the appropriate official in charge of a Headquarters program office or the designated program director, after concurrence from the recipient installation director. Contracts shall not be transferred by an installation until permission to transfer has been obtained. The concurrence of the Associate Deputy Administrator—Institution (Code AD-I) is also required for a transfer where an installation's roles and missions may be affected.

1804.7003 Preparatory actions.

The procurement officer of the installation transferring the contract shall contact the procurement officer of the installation scheduled to receive the contract. This contact shall be for the purpose of establishing a working agreement and a time-phased schedule of transfer actions.

1804.7004 Coordinating actions by the contracting officer of the installation transferring the contract.

The contracting officer shall coordinate with the following elements within the transferring installation before transferring a contract:

(a) Financial Management Office, to determine the contract financial records to be transferred and the method, timing, and dollar amount of such transfers.

(b) Technical (Engineering and Project) Office, to determine the status of any outstanding engineering changes.

(c) Reliability and Quality Assurance Office, to determine status and method of transferring the reliability and quality assurance functions.

(d) Industrial Property and Facilities Office, to determine the method of transferring the Government property records.

(e) Transportation Office, to determine the status of bills of lading furnished the contractor.

(f) Security Office, to determine whether any classified material is outstanding and whether special precautions are necessary during the transfer process.

(g) Other organizational elements, to determine the status of any other actions such as new technology, materials reports, PERT, and safety.

1804.7005 Inventory of current requests for contract administration assistance.

The contracting officer transferring the contract shall prepare an inventory of all outstanding requests for contract administration assistance issued to other Government agencies (e.g., Military Departments, Defense Contract Administration Services Regions, Department of Energy, and Federal Aviation Administration). This inventory shall include the name and address of the agency office, functions requested to be performed, estimated cost of the services, and estimated reimbursement due the administration agency for the services to be performed on the incomplete portion of each requested function. Copies of this inventory shall be provided to the contracting officer to whom the contract is to be transferred.

1804.7006 Transfer review.

The contracting officer to whom the contract is to be transferred shall be given an opportunity to review the contract, letters of request, actions in process, and other related files and to request corrective action, if necessary, before the official transfer of the contract.

1804.7007 Notification to the contractor.

After coordination with the installation organizational elements as required in 1804.7004 and with the receiving contracting officer, the transferring contracting officer shall notify the contractor in writing of the impending transfer.

1804.7008 Notification to other agencies.

As early as practicable after coordination between procurement offices, the contracting officer transferring the contract shall notify all agencies performing or requested to perform administrative services for the impending transfer.

1804.7009 Administrative actions.

Before transferring the contract, the contracting officer shall make a complete inventory of the contents of the contract file to be transferred. The contracting officer shall identify each contract administration action in process as a separate listing in the inventory and shall indicate its status.

1804.7010 Transfer.

Upon completion of the preparatory actions described in 1804.7003 through 1804.7009, both contracting officers shall agree upon acceptable dates for the transfer of the contract responsibility and the contract files. The contracting officer of the installation transferring the contract shall issue letters as indicated below and provide copies to the contracting officer receiving the contract:

(a) *Contractor.* Notification of the transfer date, termination of appointment of the contracting officer's representatives, and the name, mailing address, and telephone number of the contracting officer at the installation receiving the contract.

(b) *Contracting officer's representatives.* Termination, effective on the date of transfer, of each contracting officer's representative appointment.

(c) *Agencies performing contract administration functions.* Notification of the effective date of the transfer of the contract, along with the mailing address and telephone number of the contracting officer at the installation receiving the contract. (Existing requests for contract administration functions shall not be terminated.)

(d) *Installation organizational elements.* Notification of the effective date of transfer and other pertinent information.

(e) *Receiving installation.* Transfer of contract responsibility and transmission of the contract file, including an inventory of its contents, and a summary of any contractual problems that should be brought to the attention of the contracting officer receiving the contract. This letter shall contain a provision for acceptance of the responsibility for the contract and its related files by the contracting officer and a notification of the acceptance to the contracting officer of the installation transferring the contract.

1804.7011 Final action by the contracting officer transferring the contract.

The contracting officer at the installation transferring the contract shall retain for permanent file a copy of—

(a) The approvals and concurrences required by 1804.7002;

(b) The inventory receipt signed by the contracting officer receiving the contract;

(c) The contract itself; and

(d) Any additional documents necessary to present a complete summary of the transfer action.

1804.7012 Action by the contracting officer receiving the contract.

The contracting officer receiving the transferred contract shall —

(a) Acknowledge receipt of the contract and its related files;

(b) Inform all offices affected within the installation of the receipt of the contract;

(c) Appoint new contracting officer's representatives, as necessary;

(d) Issue a contract modification to provide for the administrative changes resulting from the transfer action (e.g., identifying offices responsible for performing contract administration and making payment and the office to which vouchers, reports, and data are to be submitted);

(e) Provide copies of the contract documents to the installation offices that have a functional responsibility for the contract; and

(f) If appropriate, supplement the letter of request to the Government agency providing contract administration services to reflect the changes resulting from the transfer action. The supplement may terminate or amend an existing contract administration support arrangement or may request support in additional areas.

Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.

This subpart contains the administrative requirements and procedures for uniform numbering of NASA contracts (including letter contracts), purchase orders (including requests to other Government agencies), basic ordering agreements, other documents evidencing in whole or in part an agreement between the parties involving the payment of appropriated funds or collection of funds for credit to the Treasury of the United States, and modifications or supplements to these instruments. It further provides for a uniform identification system for numbering solicitations.

1804.7101 Policy.

(a) Contractual documents coming within the scope of this subpart shall be numbered with approved prefixes and serial numbers for identification, audit, and filing purposes. If a prefix identification symbol is required for an installation or office not listed in this subpart, a request for the assignment of a prefix identification shall be submitted to the Office of Procurement, NASA Headquarters (Code HM). Alphanumeric characters, other than those prescribed in this subpart, shall not be used as part of the numbering system. If other identification is required, it shall be placed on the document in such a location as to clearly separate it from the identification number prescribed in this subpart.

(b) The identification number shall be retained unchanged for the life of the particular instrument and shall consist of not more than 11 alphanumeric characters positioned as prescribed in this subpart.

1804.7102 Invitations for bids, requests for proposals, NASA Research Announcements, contracts, agreements, and modifications.

1804.7102-1 Identification of solicitations.

Solicitations shall be numbered in accordance with the individual field installation's system for identifying them, except that in all cases the identifying number shall begin with the installation's numerical identification prefix (see 1804.7102-4).

1804.7102-2 Contracts and agreements requiring numbering.

The following contracts and agreements shall be numbered in accordance with the uniform numbering system prescribed in 1804.7102-3, 1804.7102-4, 1804.7102-5, and 1804.7102-7:

(a) Contracts, including letter contracts, for procurement or sale of supplies or services involving or likely to involve the payment or receipt of more than $25,000.

(b) Indefinite-delivery contracts involving more than one payment and estimated to involve payment or receipt of more than $25,000 during the fiscal year.

(c) Utilities contracts.

(d) Leases of real property and renewals of these leases.

(e) Easements.

(f) Basic ordering agreements.

(g) Other written agreements involving payment or receipt of funds not covered by 1804.7103.

1804.7102-3 Assignment and control of numbers.

(a) The numbering of contracts, agreements, and modifications shall be centrally controlled by each contracting office at NASA Headquarters, field installations, or offices for which a prefix identification symbol has been assigned.

(b) A complete identifying number shall consist of the following and shall be assigned to NASA contracts and agreements designated in 1804.7102-2:

(1) One of the prefix identification symbols contained in 1804.7102-4, followed by a hyphen.

(2) A serial number (assigned in accordance with 1804.7102-5) for the particular transaction.

1804.7102-4 Assigned contract or agreement prefixes.

(a) Approved prefixes for NASA contract or agreement numbers are as follows:

Installation	Prefix
Ames Research Center	NAS2
Goddard Space Flight Center	NAS5
Headquarters	NASW
Lyndon B. Johnson Space Center	NAS9
John F. Kennedy Space Center	NAS10
Langley Research Center	NAS1
Lewis Research Center	NAS3
George C. Marshall Space Flight Center	NAS8
NASA Resident Office–JPL	NAS7
John C. Stennis Space Center	NAS13
Space Station Procurement Office	NAS14

(b) The identification numbering system for all contracts totally funded under reimbursable arrangements with the Department of Energy shall conform to 1804.7102-3, except that a DEN prefix shall be used instead of the NAS prefix; e.g., DENW would be the Headquarters prefix, and DEN8 would be the Marshall designation.

(c) All Space Act agreements awarded under the authority of section 203(c)(5) or 203(c)(6) of the Space Act shall also be identified as specified in 1804.7102-3, except that an NCA prefix shall be used instead of the NAS prefix.

1804.7102-5 Serial numbers.

(a) Contracts and agreements identified in 1804.7102-2 shall be numbered serially by the organizational unit authorized to assign such numbers, commencing with the number "1" and continuing in succession without regard to fiscal year or type of contract; e.g., NAS5-300, NAS5-301.

(b) If the contract is a facilities contract, the letter "F," in parentheses, shall be used at the end of the serial number for identification purposes; e.g., NAS5-301(F).

(c) When the series of numbers under a symbol exceeds five digits (over 99,999), a new series shall be used, beginning the series with number "1" and followed by the capital letter "A." Should additional series become necessary, they will be distinguished by the capital letters "B," "C," and so forth, as may be required, except that the letters "I" and "O" shall not be used.

1804.7102-6 Modifications of contracts or agreements.

Modifications of definitive contracts or agreements shall (a) bear the same identification as the contract or agreement being modified and (b) be numbered consecutively for each contract or agreement, beginning with Modification Number 1, regardless of whether the modification is accomplished by unilateral or bilateral action. Except for termination notices, modifications shall be effected by the use of Standard Form 30, Amendment of Solicitation/Modification of Contract.

1804.7102-7 Letter contracts.

(a) *Superseding definitive contract.* Definitive contracts superseding letter contracts shall retain the same contract number as that originally assigned to the letter contract. Actions definitizing letter contracts are considered modifications and shall be assigned modification numbers in accordance with paragraph (b)(2) of this section.

(b) *Modifications.* (1) Additions or changes to letter contracts shall be accomplished by modification to the letter contract. Modifications shall (i) bear the same identification as the letter contract being modified and (ii) be numbered consecutively for each letter contract, beginning with Modification Number 1, regardless of whether the modification is accomplished by unilateral or bilateral action.

(2) Actions definitizing letter contracts shall be numbered beginning with the next sequential number following that of the last modification, if any, to the letter contract.

[54 FR 39369, Sept. 26, 1989]

1804.7103 Purchase orders and requests.

1804.7103-1 General.

Purchase orders (including blanket purchase agreements) and requests to other Government agencies to furnish supplies or services shall be assigned a complete identifying number consisting of—

(a) One of the letter prefixes set forth in 1804.7103-2, followed by a hyphen; and

(b) A serial number, assigned in accordance with 1804.7103-3.

1804.7103-2 Assigned purchase order or request prefixes.

Approved letter prefixes for NASA purchase orders (including blanket purchase agreements) or requests to other Government agencies are as follows:

Installation	Prefix
Ames Research Center	A
George C. Marshall Space Flight Center	H
Goddard Space Flight Center	S
Headquarters	W
John F. Kennedy Space Center	CC
Langley Research Center	L
Lewis Research Center	C
Lyndon B. Johnson Space Center	T
NASA Resident Office—JPL	WO
John C. Stennis Space Center	NS
Space Station Procurement Office	D

1804.7103-3 Serial numbers.

The same series of consecutive numbers will be used for numbering both purchase orders (including blanket purchase agreements) and requests to other Government agencies. The series shall commence with the number "1" and continue in succession without regard to the fiscal year. The number follows the letter symbol, separated by a hyphen; e.g., Order Number L-350 or Order Number W-1000. When the series of numbers under a symbol exceeds 5 digits (over 99,999), a new series shall be used, beginning the series with number "1" and followed by the capital letter "A." Should additional series become necessary, they will be distinguished by the capital letters "B," "C," and so forth, as may be required, except that the letters "I" and "O" shall not be used.

Subpart 1804.72—Review and Approval of Contractural Instruments

1804.7200 Scope of subpart.

This subpart sets forth administrative requirements for:

(a) Furnishing to NASA Headquarters advance contract information regarding proposed procurements expected to exceed the small purchase limitation and

(b) Contracts and supplemental agreements requiring approval from NASA Headquarters before award.

It also lists information to be furnished by contracting officers in submitting contracts and supplemental agreements for Headquarters approval. These requirements are in addition to other approval and review requirements.

1804.7201 Advance information.

(a) A copy of each unclassified presolicitation notice, solicitation, or changes thereto, including specifications but not drawings, shall be forwarded to the Office of Small & Disadvantaged Business Utilization, NASA Headquarters (Code K), at the time of issuance. If the proposed procurement is classified, only a copy of the solicitation notice is required.

(b) The contents of the presolicitation notice are prescribed at FAR 5.207. Each copy of the solicitation shall be accompanied by a statement of the estimated cost of the proposed procurement and a complete list of firms or persons solicited. This information is for internal NASA use only.

1804.7202 Contract Review by the contracting officer.

All contractual documents, regardless of dollar value, require a complete review by the contracting officer.

1804.7203 Contract review by Headquarters.

(a) *Purpose.* The primary purpose of NASA Headquarters review and approval of contractual actions is to provide an independent review and analysis to determine whether the procurements—

(1) Have been competently negotiated;

(2) Are based on adequate information;

(3) Are in conformance with law, established policies and procedures, and sound business practice; and

(4) Will result in contracts that adequately protect the Government's interest.

(b) *Information to be furnished.* Requests for approval of contracts and supplemental agreements submitted to

Headquarters for approval by the Assistant Administrator for Procurement, in accordance with subpart 1807.71, Master Buy Plan Procedures, and 1816.603, Letter contracts, shall include the information required by this section and shall be forwarded in sufficient time to allow a minimum of 15 days for review. The official contract file shall be submitted with the request for approval and shall include a completed NASA Form 1098, Checklist for Contract Award File Content. Where Headquarters legal counsel review is required, a duplicate copy of the file should, if practical, be forwarded in order to expedite review. A list of contracts requiring such legal review will be published periodically.

(c) *Negotiated contracts and supplemental agreements.* Each request for approval of a negotiated contract or supplemental agreement shall be accompanied by:

(1) Eight copies of the contract, four of which have been executed by the contractor and contracting officer, and

(2) The official contract file containing the appropriate documentation as set forth in FAR 4.803(a).

However, for the items specified in FAR 4.803(a)(10), (11), and (12), the contracting officer shall provide documentation pertaining only to the successful offeror; and, for the items specified in FAR 4.803(a)(26), the contracting officer is not to provide supporting documentation for previously issued contract modifications except as required below. When the contract being forwarded is a supplemental agreement to an existing contract, the contract file shall include an index of all previous modifications, which will serve as a guide or quick reference; e.g., S.A. No. 2—Added the clause at 1852.223-70, Safety and Health.

(d) *Conditional approval of contracts and supplemental agreements.* (1) Contracts and supplemental agreements submitted to Headquarters for the approval of the Assistant Administrator for Procurement may be approved conditionally, subject to requiring the cognizant contracting office to take certain corrective actions within a specified period of time. These corrective actions include:

(i) Revising, deleting, or adding contract clauses and

(ii) Developing additional supporting data for inclusion in the contract file, prior to or concurrent with the distribution of the approved contract or by an early supplemental agreement.

(2) The procurement officer shall ensure that these corrective actions are accomplished in accordance with the conditional approval. In addition, the procurement officer shall provide the Assistant Administrator for Procurement (Code HS):

(i) A copy of the corrected contract pages, supplemental agreement, or additional supporting data meeting the conditions of approval; and

(ii) A memorandum referencing the Headquarters conditional approval and indicating the status of the corrective actions.

(3) On receiving and reviewing the corrective actions, the Headquarters Office of Procurement (Code HS) will notify the cognizant procurement officer of the disposition of the conditional approval. This notice shall be made a part of the official contract file and the Headquarters file of record.

(e) *Approval.* The approval required under this section shall be made by signature of the Assistant Administrator for Procurement on the contract/supplemental agreement.

Subpart 1804.73—Procurement Requests

1804.7301 General.

(a) Procurement requests shall be prepared and submitted to the contracting office in accordance with installation instructions.

(b) Except in unusual circumstances, the contracting office shall not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the approved procurement request certifying that funds are available when—

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and funds to cover the procurement will be available prior to the date set for contract award or contract modification; and

(3) The procurement officer authorizes such action in writing before solicitation issuance.

(c) The procurement request shall be assigned within the contracting office to a negotiator who will be responsible to the contracting officer for conducting the business aspects of the transaction. The negotiator shall review the request to ensure that it complies with the FAR, this regulation, and applicable installation instructions and that the information in the request is sufficient to prepare the solicitation. Uncertain requirements or inconsistencies in the procurement request will be discussed with the initiator of the request and resolved prior to initiating procurement action.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1805—PUBLICIZING CONTRACT ACTIONS

Subpart 1805.1—Dissemination of Information

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1805.302 Preparation and transmittal of synopses of awards.
1805.302-70 Headquarters notification.
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Subpart 1805.4—Release of Information

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Subpart 1805.5—Paid Advertisements

1805.502 Authority.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28211, July 5, 1989, unless otherwise noted.

Subpart 1805.1—Dissemination of Information

1805.101 Methods of disseminating information.

For NASA policy regarding paid advertisements, see FAR 5.502 and 1805.502.

Subpart 1805.2—Synopses of Proposed Contracts

1805.201 General.

1805.201-70 Headquarters notification.

A copy of each synopsis of a proposed contract action sent to the Commerce Business Daily (CBD) shall be furnished to the Director of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K).

1805.202 Exceptions

(a) Under FAR 15.507(b)(4), the contracting officer must comply with the preaward synopsis requirement at FAR 5.201 for all unsolicited proposals that will result in contracts, unless evaluation on a case-by-case basis determines that one of the exceptions contained in FAR 5.202 (e.g., 5.202(a)(8)) applies. The synopsis contemplated for such unsolicited proposals is the notice of proposed contract action synopsis addressed by FAR 5.201, not the research and development (R&D) sources-sought advance notice addressed by FAR 5.205(a).

(b) When award in response to an unsolicited proposal is intended to be accomplished by other than full and open competition (FAR 6.302-1(a)(2)(i)), this synopsis shall include reference to Numbered Note 22 unless no synopsis is required pursuant to FAR 5.202(a)(8), because a synopsis cannot be drafted without improperly disclosing the originality of thought or innovativeness of the proposed research, or without disclosing proprietary information associated with the proposal.

(c) With careful drafting, it should usually be possible to develop a synopsis that generically describes the NASA requirement fulfilled by the unsolicited proposal without disclosing the originality of thought, innovativeness, or proprietary information contained in the proposal. Generally, the contracting officer, in developing the synopsis, will find it possible to address the general or research area addressed in the unsolicited proposal. In a few instances, however, the mere statement in a notice of contract action synopsis that a particular problem and solution exist would improperly disclose a proposer's unique originality of thought or innovativeness; in those cases, the exception in FAR 5.202(a)(8) applies, and no CBD synopsis need be submitted. Thus, the requirement is to publish CBD notice of contract action synopses whenever it is possible to synopsize without improperly disclosing originality of thought, innovativeness of proposed research, or proprietary information associated with the unsolicited proposal.

(d) The phrase "proprietary information" as used at FAR 5.202(a)(8) means information (data) that constitutes a trade secret and/or information that is commercial or financial and confidential or privileged.

1805.205 Special situations.

Potential sources responding to R&D advance notices shall be added to the appropriate solicitation mailing list for the subsequent solicitation and, if they do not appear on the solicitation mailing lists established in accordance with FAR 14.205-1, shall be requested to submit Standard Form 129, Solicitation Mailing List Application. Responding sources on established lists may be requested to submit amended applications in order to reflect their current capabilities.

1805.207 Preparation and transmittal of synopses.

(a) *Federal Information Processing Standards (FIPS) Number.* FAR 5.207(b)(4) requires that agencies identify each synopsis by a Federal Information Processing Standards (FIPS) number. The numbers assigned to NASA installations by FIPS-95 are—

Ames Research Center	8020
Goddard Space Flight Center	8026
Headquarters	8001
Johnson Space Center	8032
Kennedy Space Center	8035
Langley Research Center	8038
Lewis Research Center	8041
Marshall Space Flight Center	8044
NASA Resident Office-JPL	8029
Stennis Space Center	8047

(b) *Architect-Engineer Services.* (1) Each notice publicizing the procurement of architect-engineer services shall be headed "R. Architect-Engineer Services."

(2) In addition to meeting the requirements of FAR 5.207(c), the project description shall—

(i) State the relative importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, if required;

(ii) Describe any specialized qualifications, security classifications, and limitations on eligibility for consideration;

(iii) Describe qualifications or performance data required from architect-engineer firms; and

(iv) If the procurement is to be set aside for small business, state this fact, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business representation.

(3) Contracting officers shall add at the end of the synopsis:

> See Note 24. Provisions of Note 24 apply to this notice except that (a) in the sentence beginning "Selection of firms for negotiations," the fourth additional consideration listed is changed to read: "(4) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry;" and (b) in the last sentence, "National Aeronautics and Space Administration" is substituted for "Department of Defense."

[54 FR 39369, Sept. 26, 1989]

Subpart 1805.3—Synopses of Contract Awards

1805.302 Preparation and transmittal of synopses of awards.

1805.302-70 Headquarters notification.

The contracting officer shall mail one copy of the synopsis of contract award prepared in accordance with FAR 5.302 to the Office of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K) and send one copy to the installation's Public Affairs Office.

1805.303 Announcement of contract awards.

Congressional notification shall be in accordance with 1805.403-70.

1805.303-70 Furnishing additional procurement information to the public.

(a) *Policy.* (1) In addition to publicizing procurements and contract awards in the CBD, NASA furnishes the public, upon request, through the Public Affairs Office of the NASA installation receiving the request, information on specific current NASA procurements, including—

(i) The names of firms invited to submit offers;

(ii) The names of firms that attended any pre-bid or pre-proposal conference;

(iii) After the date established for receipt of offers, the names of firms that submitted them (but see 1815.413); and

(iv) Contract award information required to be publicized in the CBD under the provisions of FAR 5.303 and section 1805.303-70.

(2) Exceptions will be permitted only when the Assistant Administrator for Procurement or the Director of the field installation concerned determines that disclosure in accordance with paragraph (a)(1) of this section would be prejudicial to the interests of NASA.

(b) *Procedures.* Contracts requiring approval by the Assistant Administrator for Procurement under subpart 1804.72 will not be distributed, nor will any information be given to any source outside of NASA as to whether or not they have been approved, until 24 hours after the Director of Public Affairs and the Assistant Administrator for Legislative Affairs, NASA Headquarters, have been advised that the contract has been consummated.

(c) *Unsuccessful offerors.* For guidance on releasing information to unsuccessful offerors, see FAR 14.408 and FAR subpart 15.10.

[54 FR 28211, July 5, 1989, as amended at 55 FR 27088, June 29, 1990]

1805.303-71 Public Affairs Office notification.

(a) *Letter contracts.* (1) The procedures for issuing and approving letter contracts are contained in FAR 16.603 and 1816.603. Before transmitting a letter contract to a contractor for signature, the procurement officer shall furnish to the installation's Public Affairs Office the following information:

(i) Whether the letter contract initiates a new contract or is for additional work or services under an existing contract.

(ii) The dollar amount authorized for the letter contract and the estimated total cost of the contract or supplemental agreement.

(iii) Name and address of the contractor.

(iv) Location where the work is to be performed.

(v) A brief description of the work, including identification of the program and project.

(vi) For the purpose of responding to queries only, a list of any unsuccessful offerors and their addresses.

(2) Upon receiving the information described in subparagraph (a)(1) of this section, the installation's Public Affairs Office shall transmit the information immediately, in the form of a news release, by priority TWX or more expeditious means (if appropriate), to the Chief, News and Information Branch (Code PM), and the Assistant Administrator, Office of Legislative Affairs (Code LC), NASA Headquarters. The information shall not be otherwise released by the installation's Public Affairs Office, nor shall the letter contract be released before 2:30 p.m. Washington, DC time of the next working day, unless clearance has been received earlier from the Chief, News and Information Branch (Code PM). If circumstances indicate a need for earlier action, exception must be obtained from the Assistant Administrator for Procurement.

(b) Definitive contracts and supplemental agreements. (1) This paragraph (b)(1) does not pertain to supplemental agreements covering overruns or incremental funding actions or to contracts or supplemental agreements that require approval of the Assistant Administrator for Procurement pursuant to 1804.7203. It does pertain to contracts, supplemental agreements, and the execution of options that are in an amount of $10,000,000 or over for the Stennis Space Center, Headquarters Acquistion Division, Space Station Procurement Office, and the NASA Resident Office—JPL and $25,000,000 or over for Ames Research Center, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Lewis Research Center, and Marshall Space Flight Center. It also pertains to any procurement action that, in the judgment of the contracting officer, has Headquarters public information implications (e.g., the transfer of personnel from one State to another). Such contracts and supplemental agreements shall not be distributed nor shall any source outside NASA be informed that the contractual instrument has been signed by both parties until the procedures in paragraphs (b)(1)(i) and (ii) of this section, are carried out:

(i) The procurement officer shall furnish to the installation's Public Affairs Office the following information:

(A) Whether the contract or supplemental agreement initiates a new contract or is for additional work or services under an existing contract.

(B) Type of contract.

(C) The dollar amount authorized for the instant action and the estimated total cost of the contract if this is different.

(D) Name and address of the contractor.

(E) Location where the work is to be performed.

(F) A brief description of the work, including identification of the program and project.

(G) For the purpose of responding to queries only, a list of any unsuccessful offerors and their addresses.

(ii) Upon receiving the information listed in paragraph (b)(1)(i) of this section, the installation's Public Affairs Office shall immediately prepare a news release in the form of a priority TWX containing as a minimum the information in paragraph (b)(1)(i) of this section, and transmit it to the Chief, News and Information Branch (Code PM), and the Assistant Administrator, Office of Legislative Affairs (Code LC), NASA Headquarters. The information shall not be otherwise released by the installation's Public Affairs Office, nor shall the contract instrument be released before 2:30 p.m. Washington, DC time of the next working day, unless clearance has been received earlier from the Chief, News and Information Branch (Code PM). If circumstances indicate a need for earlier action, exception must be obtained from the Assistant Administrator for Procurement.

(2) When forwarded for the approval of the Assistant Administrator for Procurement, if required by 1804.7203, contracts and supplemental agreements shall be accompanied by a draft news release prepared by the installation's Public Affairs Office and furnished to the contracting office for inclusion in the submission file. The news release shall contain as a minimum the information required by subdivision (b)(1)(i) of this section. At the time the Assistant Administrator for Procurement approves the contract or supplemental agreement, the news release shall be forwarded immediately to the Chief, News and Information Branch (Code PM), and to the Assistant Administrator, Office of Legislative Affairs (Code LC).

[54 FR 28211, July 5, 1989, as amended at 55 FR 27088, June 29, 1990]

Subpart 1805.4—Release of Information

1805.401 General.

Release of information to the Small Business Administration shall be in accordance with FAR 19.402(b).

1805.402 General public.

Requests from the general public for specific information shall be processed in accordance with 1805.303-70.

1805.403 Requests from Members of Congress.

1805.403-70 Headquarters approval and release.

The proposed reply, with full documentation, shall be promptly prepared and forwarded by the most expeditious means to the Assistant Administrator, Congressional Relations Office (Code XC), NASA Headquarters, for approval and release. (See 1805.303-70.)

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Use of paid advertisements for procurement purposes is not authorized in NASA.

PART 1806—COMPETITION REQUIREMENTS

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

1806.202 Establishing or maintaining alternative sources.
1806.202-70 Determination and findings.

Subpart 1806.3—Other Than Full and Open Competition

1806.301 Policy.
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1806.302-270 Support services contracts.
1806.302-7 Public interest.
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1806.303 Justifications.
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1806.303-170 Sole-source purchases by contractors.
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1806.303-270 NASA employees or former NASA employees.
1806.303-271 Use of unusual and compelling urgency authority.
1806.304 Approval of the justification.
1806.305 Availability of the justification.

Subpart 1806.5—Competition Advocates

1806.570 NASA competition advocacy program.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28213, July 5, 1989, unless otherwise noted.

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

1806.202 Establishing or maintaining alternative sources.

(a) The authority of FAR 6.202 is to be used to exclude one source only. If, for example, FAR 6.202(a)(3) appears to be applicable, but all for-profit concerns as well as the current source will be excluded, then FAR 6.302-3 shall be used instead.

(b) The authority to sign the D&F required by FAR 6.202(b)(1) is hereby delegated to the approval levels specified in FAR 6.304 and 1806.304.

1806.202-70 Determination and findings.

(a) *Procedure.* (1) Each determination and findings (D&F) shall be dated at the time of signature.

(2) Each request for approval of a D&F over $10,000,000 under 10 U.S.C. 2304(b)(1) (FAR 6.202) shall consist of—

(i) A memorandum from the procurement officer to the Assistant Administrator for Procurement (Code HS) recommending D&F approval; and

(ii) An original and three copies of the D&F in the format required by paragraph (b) of this section.

(3) The Assistant Administrator for Procurement (Code HS) shall return the signed D&F, if approved, to the contracting office, retaining the copies in Headquarters files.

(b) *Content.* When the authority of FAR 6.202(a) is proposed for use, it must be shown clearly that the necessity for excluding a particular source arises from genuine considerations pertinent to the authority of FAR 6.202(a). The supporting data and the D&F must name the source to be excluded and shall include the following information as applicable and any other relevant information:

(1) The specific purpose to be served in excluding the source; i.e., to increase or maintain competition, the interest of national defense in having a facility available in case of a national emergency or industrial mobilization, or the interest of national defense in establishing or maintaining an essen-

tial engineering, research, or development capability.

(2) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award.

(3) The circumstances making it necessary to exclude a particular source from the contract action:

(i) Reasons for lack of sources; e.g., the technical complexity and criticality of the item.

(ii) Current annual requirement and prospective needs for the supplies and services.

(iii) Projected future requirements.

(4) Whether the existing source must be totally excluded action or whether a partial exclusion is sufficient.

(5) The potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions.

(6) When the authority of FAR 6.202(a)(1) is cited, the basis for—

(i) Assumptions regarding future competition; and

(ii) The determination that exclusion of a particular source will likely result in reduced overall costs for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, costs associated with facilities, duplicative administration costs (such as for additional inspection or testing), economic order quantities, and life-cycle-cost considerations.

(7) When an additional source or additional sources must be established to provide production capacity to meet current and mobilization requirements—

(i) The current annual and the mobilization requirements for the item, citing the source of, or the basis for, the planning data;

(ii) A comparison of current production capacity with current and mobilization requirements; and

(iii) The hazards of relying on the present source and the time required for new sources to acquire the necessary facilities and skills and achieve the production capacity necessary to meet requirements.

(c) *Formats.* A sample format for D&Fs citing the authority of FAR 6.202(a) follows:

NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority to Exclude a Source

On the basis of following findings and determination, which I make under the authority of 10 U.S.C. 2304(b)(1) as implemented by FAR 6.202, the proposed contract action described below may be awarded using full and open competition after exclusion of (1).

Findings

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the source identified above.

2. The source identified above can be expected to receive an award for this requirement unless excluded.

3. It is necessary to establish or maintain an alternative source or sources.

4. The exclusion of this source will increase or maintain competition and is likely to result in reduction of (2) in overall costs for any anticipated acquisition of the supplies or services being acquired. This estimate is based on (3).

(See Note 4 for the use of Alternates I and II below.)

Alternate I: The exclusion of this source will serve the national defense interest by having an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization, because (5).

Alternate II: The exclusion of this source will serve the national defense interest by establishing or maintaining an essential engineering, research, or development capability of an educational or other nonprofit institution or a federally funded research and development center, because (5).

Determination

The exclusion of the source identified above will increase or maintain competition and is likely to result in reduced overall costs for any anticipated acquisition of the supplies or services being acquired.

(See Note 4 for the use of Alternates I and II below.)

Alternate I: It is in the interest of the national defense to exclude the source identified above in order to have an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization.

Alternate II: It is in the interest of national defense to exclude the source identified above in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date_____________

NOTES:

1. Name of source to be excluded.
2. Description of estimated reduction in overall costs.
3. Description of how estimate was derived.
4. In paragraph 4 and in the Determination, the basic wording is appropriate when FAR 6.202(a)(1) applies; Alternate I is appropriate when FAR 6.202(a)(2) applies; and Alternate II is appropriate when FAR 6.202(a)(3) applies.
5. Description of circumstances necessitating the exclusion of the identified source.

Subpart 1806.3—Other Than Full and Open Competition

1806.301 Policy.

For NASA, the appropriate statutory authorities relative to FAR 6.302 are in Title 10 of the United States Code.

1806.302 Circumstances permitting other than full and open competition.

1806.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

1806.302-170 Technical equipment requiring standardization and interchangeability of parts.

(a) The contracting officer shall review actions taken under the authority of FAR 6.302-1(b)(4) at least once every two years to determine whether use of this authority should be continued, revised, or cancelled.

(b) This authority may be used when:

(1) Only one or a limited quantity of a particular item is to be purchased and

(2) Compatibility with existing equipment and interchangeability of parts are essential.

Use of this authority in such a case does not mean that subsequent purchases of similar equipment will necessarily require the use of less than full and open competition for purposes of standardization. The contracting officer must examine the facts involved in each case to determine whether compatibility with other equipment and interchangeability of parts are essential objectives.

1806.302-2 Unusual and compelling urgency.

1806.302-270 Support services contracts.

It may become necessary to extend the performance period of an existing support services contract to avoid a lapse in services pending completion of a full and open competition for the succeeding period. Under these circumstances, the authority at FAR 6.302-1 is not appropriate, because of the pending competition and because it does not cover follow-on contracts for services. However, if the contemplated action otherwise conforms to the requirements at FAR 6.302-2 and the additional documentation at 1806.303-271 is included in the justification for other than full and open competition, then the existing contract may be extended under this authority.

1806.302-7 Public interest.

1806.302-770 Determination and findings.

(a) *Procedure.* The contracting officer shall prepare the D&F required by FAR 6.302-7(c)(1), using the format provided in paragraph (b) of this section. The original and three copies of the D&F shall be submitted to the Assistant Administrator for Procurement (Code HS) for concurrence and coordination up to the Administrator for signature.

(b) *Format.* The following format shall be used for the D&F:

NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Use Less Than Full and Open
Competition

On the basis of the following findings and determination, which I make under the authority of 10 U.S.C. 2304(c)(7) as implemented by FAR 6.302-7, it is in the public interest to provide for less than full and open competition in the contract action described below.

Findings

1. The (1) proposes to enter into a contract for the acquisition of (2).

2. Use of the authority cited above is necessary in the public interest for the following reasons: (3).

Determination

For the reasons described above, it is necessary in the public interest to use procedures other than competitive procedures in the proposed acquisition.

Date______________

NOTES:

(1) Name of contracting activity.

(2) Brief description of supplies or services.

(3) Explain the need for use of the authority.

(c) *Notice to Congress.* The notice to Congress required by 10 U.S.C. 2304(c)(7)(B) and FAR 6.302-7(c)(2) shall be made by NASA Headquarters, Office of Legislative Affair (Code LC). Code HS shall request the notice to be made immediately upon approval of a D&F under paragraph (a) of this section and shall advise the contracting activity of the date upon which the notification period ends.

[54 FR 28213, July 5, 1989, as amended at 55 FR 27088, June 29, 1990]

1806.303 Justifications.

1806.303-1 Requirements.

(a) Justifications for using less than full and open competition may be prepared by the technical office initiating the contract action when it is recommending the use of the justification authority, or by the contracting officer if the technical office does not make such a recommendation.

(b) The contracting officer shall send a copy of each approved justification or D&F that cites the authority of FAR 6.302-3(a)(2)(i) or FAR 6.302-7 to NASA Headquarters, International Relations Division (Code XI), unless one of the exceptions at FAR 25.403 applies to the procurement. The transmittal shall indicate that the justification is being furnished under FAR 6.303-1(d).

(c) Before using the authority of FAR 6.303-1(e), the contracting officer shall informally discuss the reasons for the proposed use of less than full and open competition under FAR 6.302-2 with the justification approving authority, except that if that authority is NASA Headquarters (Code H), the discussion shall be between the procurement officer and the Assistant Administrator for Procurement.

(d) Each approved justification shall be retained in the contract file.

1806.303-170 Sole-source purchases by contractors.

The requirements of FAR part 6 and NFS part 1806 apply if NASA directs a prime contractor (by specifications, drawings, parts lists, or otherwise) to purchase items on a sole-source basis. Accordingly, procurement officers shall take necessary actions to ensure that such sole-source acquisitions are properly justified. Where "brand name or equal" purchase descriptions list the salient physical, functional, or other characteristics of the item being procured and are properly used under 1810.004-71, the justification requirements of FAR part 6 and NFS part 1806 do not apply.

1806.303-2 Content.

1806.303-270 NASA employees or former NASA employees.

If any contract with a NASA employee or an individual employed by NASA within the past two years is proposed on the basis of other than full and open competition, the justification shall state that the proposed contractor is a NASA or former NASA employee and shall explain why it is in the best interest of the Government to take this action (see FAR subpart 3.6 and NFS 1803.602, 1803.7001(a), and 1806.304-70).

1806.303-271 Use of unusual and compelling urgency authority.

If the authority at FAR 6.302-2 is used for extending the performance period of an existing support services contract under the circumstances described at 1806.302-270, the justification shall contain, in addition to the information required by FAR 6.303-2—

(a) Documentation that the procurement process for the successor contract was started early enough to allow for adequately planning and conducting a full and open competition, together with a description of the circumstances that prevented award in a timely manner; and

(b) Documentation of the reasons why no other source could practicably compete for the interim requirement.

1806.304 Approval of the justification.

(a) All justifications for contract actions over $100,000 shall be submitted to the procurement officer for concurrence before being forwarded for approval. Justifications over $1,000,000 shall also be submitted to the installation's Deputy Director for concurrence, and those over $10,000,000 shall be further submitted for the concurrence of the installation's Director, before being forwarded for approval. The contracting officer shall use NASA Form 1452, Signature Page (Installation), for actions requiring Headquarters approval.

(b) The authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.

(c) For proposed contract actions over $10,000,000, the original justification and three copies shall be forwarded to the Assistant Administrator for Procurement (Code HS). After approval by the Assistant Administrator for Procurement, the signed original will be returned to the procurement officer. The copies will be retained in Headquarters files.

(d) Regardless of dollar value, class justifications shall be concurred in and approved as if they were individual justifications over $10,000,000.

1806.305 Availability of the justification.

(a) Requests for inspection of justifications should be submitted in writing and should identify the particular procurement involved. Requestors making oral requests should be encouraged to submit them in writing but are not required to do so.

(b) The contracting officer should consult counsel regarding disclosure exemptions and deletion and protection of proprietary data. Requests should be processed promptly.

Subpart 1806.5—Competition Advocates

1806.570 NASA competition advocacy program.

NASA's implementation of FAR subpart 6.5 is in NMI 1210.2, NASA Competition Advocacy Program.

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28216, July 5, 1989, unless otherwise noted.

Subpart 1807.1—Acquisition Plans

1807.101 Definitions.

Procurement plan means a detailed outline of the method by which the contracting officer expects to accomplish the procurement. It is an administrative tool designed to enable the contracting officer to plan effectively for accomplishing an assigned procurement by analyzing the requirement and determining the procurement method.

1807.102 Policy.

(a) In R&D procurements over $100,000, when only three or fewer sources are known, the contracting officer shall have the requirements office query the Defense Technical Information Center (DTIC) IR&D Database to identify additional sources conducting IR&D in the area of the procurement, in addition to using other market survey techniques. If needed, specific information on access to and use of the DTIC IR&D Database by a particular NASA installation may be obtained from that installation's designated IR&D focal point.

(b) As authorized in FAR 7.102, NASA uses its procurement planning system in lieu of the criteria in FAR subpart 7.1. However, all procurement plans shall comply with FAR 7.104(c), 7.105(b)(2), and, when appropriate, 7.106. Regardless of the method employed, every acquisition shall be adequately planned to allow enough time to complete the competitive procurement process and award a contract by the required date.

1807.103 Agency-head responsibilities.

(a) *Requirement for preparation of procurement plans.* (1) Except as otherwise authorized by subparagraph (a)(2) of this section, the contracting officer shall prepare a procurement plan, with the advice and assistance of the cognizant technical division, for each negotiated procurement estimated to exceed the dollar amount set forth below for the installation concerned. The plan shall be prepared before soliciting proposals.

(i) $250,000 for—

(A) Stennis Space Center.

(B) Headquarters Acquisition Division.

(C) Space Station Procurement Office.

(D) NASA Resident Office—JPL.

(ii) $500,000 for—

(A) Ames Research Center.

(B) Goddard Space Flight Center.

(C) Johnson Space Center.

(D) Kennedy Space Center.

(E) Langley Research Center.

(F) Lewis Research Center.

(G) Marshall Space Flight Center.

(2) Procurement plans are not required for procurements—

(i) Of architect-engineering services;

(ii) Based on unsolicited proposals;

(iii) Of basic research from nonprofit organizations;

(iv) Of utility services where the services are available from only one source;

(v) Made from or through other Government agencies;

(vi) Of industrial facilities required in support of related procurement contracts; or

(vii) Resulting from broad agency announcements listed in 1835.016.

(b) *Approval of procurement plans.* (1) Whenever the estimated cost of the procurement, including options and later phases contemplated for the same program or project meets the thresholds below, procurement plans shall, as a minimum, be reviewed and approved as follows:

(i) For procurements in excess of the applicable dollar amount in subparagraph (a)(1) of this section, but less than the dollar amount below for the installation concerned, the procurement plan shall be submitted for the approval of the Procurement Officer or designee after review and written concurrence by the head of the cognizant technical division or laboratory (for the purpose of this requirement, the term "or designee" means the individual authorized by the Procurement Officer to sign the procurement plan; this authorization shall be in writing and may not be delegated to more than one individual).

(A) $5,000,000 for—

(*1*) Stennis Space Center.

(*2*) Headquarters Acquisition Division.

(*3*) Space Station Procurement Office.

(*4*) NASA Resident Office—JPL.

(B) $10,000,000 for—

(*1*) Ames Research Center.

(*2*) Goddard Space Flight Center.

(*3*) Johnson Space Center.

(*4*) Kennedy Space Center.

(*5*) Langley Research Center.

(*6*) Lewis Research Center.

(*7*) Marshall Space Flight Center.

(ii) For procurements within the range of the dollar amounts below for the installation concerned, the procurement plan shall be submitted for the approval of the installation's Head, Deputy Head, or Associate Director (as used here, "Associate Director" means a full Associate Director, not an Associate Director for) after reviews and written concurrences by the Director or Assistant Director of the cognizant technical directorate, the cognizant Program/Project Manager, or the cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer.

(A) Over $5,000,000 but less than $10,000,000 for—

(*1*) Stennis Space Center.

(*2*) Headquarters Acquisition Division.

(*3*) Space Station Procurement Office.

(*4*) NASA Resident Office—JPL.

(B) Over $10,000,000 but less than $25,000,000 for—

(*1*) Ames Research Center.

(*2*) Goddard Space Flight Center.

(*3*) Johnson Space Center.

(*4*) Kennedy Space Center.

(*5*) Langley Research Center.

(*6*) Lewis Research Center.

(*7*) Marshall Space Flight Center.

(iii) For procurements selected for Headquarters review and approval in accordance with the Master Buy Plan Procedure, the procurement plan shall be submitted for the signature of the Head of the Installation after reviews and written concurrences by the Director or Assistant Director of the cognizant technical directorate, the cognizant Program/Project Manager, or the cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer. The procurement plan shall be submitted in original and ten copies to the Assistant Administrator for Procurement (Code HS) for approval.

(iv) The position title shall be shown for each individual signing the procurement plan as required by paragraphs (b)(1)(i) through (iii) of this section.

(2) Approval of a procurement plan does not constitute approval of any deviations, special conditions, or special clauses that may be required; they must be submitted for review and approval under FAR subpart 1.4 and/or 1801.4.

[54 FR 28216, July 5, 1989, as amended at 55 FR 27088, June 29, 1990; 55 FR 39156, Sept. 25, 1990]

1807.170 Procurement plan contents.

1807.170-1 Procurement plans requiring approval by NASA Headquarters.

(a) Procurement plans shall describe the procurement, including options, and later phases contemplated for the same program or project, for example Phase C/D. Approval of the procurement plan does not constitute approval of later phases. In order to consider changes that may occur from an initial procurement, later phases exceeding the thresholds in 1807.103, require approval of a separate plan.

(b) Each procurement plan prepared for approval by NASA Headquarters shall be prepared on NASA Forms 1451 and 1452. Form 1451, Request for Procurement Plan Approval, shall be completed as follows:

(1) *Item 1. A descriptive short title.* In this item, include only a descriptive short title of the procurement. A detailed description of the proposed procurement shall be included in subse-

quent pages as required. The information to be provided consists of—

(i) A clear and concise description, including intended use, of the item or service to be procured;

(ii) The number of units, delivery schedule, and/or period of performance (note: if a schedule of major events will enhance the plan, it should also be included);

(iii) An identification of any option provision, including the periods covered and estimated costs;

(iv) An identification of any later phases if the procurement is to be a phased procurement including the estimated cost thereof; and

(v) A statement as to whether the contractor will be required to comply with detailed specifications, meet performance requirements, perform a mission, or furnish a level of effort.

(2) *Item 2. Name of installation.* Give the name of the installation responsible for the procurement.

(3) *Item 3. Plan prepared by.* Give the name of the individual who prepared the plan.

(4) *Item 4. Date.* Enter the date the plan is prepared.

(5) *Item 5. Responsible technical office.* Identify the office (by title) that will be responsible for technical monitoring of the contract. Include a technical point of contact and telephone number.

(6) *Item 6. Total estimated cost of this procurement.* Provide one figure for the total estimated cost of the proposed procurement, including options. When options are involved, show the cost for each separately on subsequent pages as a breakout from total cost.

(7) *Item 7. Proposed funding by fiscal year and unique project number (UPN).* Identify the funding amounts by appropriation, fiscal year, and UPN for the procurement covered by the plan. When funding is obtained from multiple projects, provide a complete identification of each fund source. Include the following statement: "Obligations may not exceed those authorized in the Headquarters-approved Annual Operating Plan."

(8) *Item 8. Full and open competition.* Check appropriate box to indicate whether full and open competition is provided for or whether other than full and open competition is contemplated.

(9) *Item 9. Type of contract.* State the type of contract recommended for the procurement. On subsequent pages, discuss the contract type and the rationale for its selection. If an incentive contract is proposed, discuss the type or types of incentive considered most suitable for the accomplishment of the procurement objectives.

(10) *Item 10. Contractor-owned and Government-furnished property.* (i) If the proposed contract, exclusive of options, will be for a shorter period than the useful life, for the program, of any required contractor-owned or leased facilities (as defined in FAR 45.301) and the facilities are unlikely to be needed by the contractor for any purpose other than the program effort being contracted for, then the procurement plan shall discuss the feasibility of the Government acquiring the right to use the facilities for longer than the proposed contract period as well as the proposed procurement strategy for accomplishing this use. The following shall be considered:

(A) If program uncertainties for continuing beyond the contract period of performance are sufficient, it may be in the Government's best interest to acquire use of the facilities during only that time. This strategy may make the facilities more costly to the Government for the contract period than if a contractual arrangement for longer use were made. However, it should reduce the program risks associated with longer Government facilities obligations; and

(B) If it is in the Government's best interests to acquire the right to use the facilities for longer than the proposed contract period in order to take advantage of economies in long-term facilities investment, then the proposed contractor's obligations, the Government's obligations (e.g., contract terms and profit) that will encourage long-term investment, the contract cost strategy for facilities and funding limitations shall be addressed. There are many alternative long-term investment approaches available for the contracting officer to consider. Some examples of representative strategies include requiring the contractor to—

(1) Enter into a long-term lease of the facilities from a lessor, subject to the lease being canceled if the prime contractor does not continue to perform the requirement throughout the useful life of the facilities (e.g., the contractor is not selected in a subsequent recompetition of the requirement). Using this strategy, the contracting officer should encourage the contractor to seek an option to transfer the lease to a successor contractor;

(2) Purchase the facilities, with depreciation and cost-of-money accelerated for the contract period of performance, at the conclusion of which the Government has a unilateral option to purchase the facilities at the depreciated value (at or near $0) based on the contractor's depreciation schedule. The facilities could then be provided to the successor contractor as Government property (see FAR 30.409-50(e)(5) and 30.409-60(d)); and

(3) Purchase the facilities, with depreciation and cost-of-money over the useful life (determined without regard to program or contract duration; see FAR 30.409-40(b)(1)) of the facilities. At the completion of the contract period of performance, either the Government would purchase the facilities at their depreciated value, or the successor contractor would be required to purchase the facilities, also at their depreciated value, and continue the prior contractor's depreciation approach.

(ii) Indicate, by checking the appropriate box, whether the procurement will require providing any existing, new, or modified Government property. When other Government property is to be provided, identify the items and dollar amounts involved. The dollar amounts provided in Item 10 shall not be included in those specified under Items 6 and 7 unless the property or facilities are part of the procurement. If dollar amounts in Item 10 are included under Items 6 and 7, they should be so annotated under this item on the following pages.

(11) *Item 11. Procurement action schedule.* Indicate the date the procurement plan was submitted to Headquarters for review and approval. For all other entries, provide only the number of calendar days required to complete the action (beginning at the time the previous action was scheduled to be completed) in order to meet the program schedule.

(c) Additional pages. (1) *General.* Additional pages to the plan should include any information required from the Form 1451 items. Include any comments required by paragraph (a) of this section not covered elsewhere and any other information needed to amplify or clarify any item. In addition—

(i) Identify any deviations from the FAR or NFS (A separate request for deviation must be submitted. See 1807.103(b)(2).);

(ii) Identify any special conditions or clauses required;

(iii) Identify all separate approvals required in support of the proposed procurement;

(iv) Include a copy of any comments by legal counsel for the contracting office (or a statement that counsel has no objection to the plan), and describe actions taken in response to them (counsel's concurrence will satisfy this item); and

(v) Discuss consideration given to participation by small business, including minority business enterprises.

(2) *Competition.* Describe how competition will be sought and promoted. If appropriate, discuss how it will be sustained through the course of the acquisition. If full and open competition is not contemplated, cite the authority in FAR 6.202 or 6.302; identify the source(s); and discuss why it cannot be obtained. When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the competition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

(3) *Relationship to other procurements, relevant data, and studies.* Discuss the relationship of this procurement to any active contracts, including their status of completion. Identify the extent to which their product may affect this procurement. Indicate whether performance under them should be permitted to continue

during the competitive phase of this action. Discuss all relevant data and studies, whether obtained under contract or through in-house efforts, and state whether they will be made available to all offerors participating in the competition. If data or studies are available, but it is not planned to make them available to prospective offerors, state why.

1807.170-2 Procurement plans requiring approval at the installation level.

Procurement plans prepared for installation-level approval shall be prepared in accordance with 1807.170-1 or in the format prescribed by the installation.

1807.170-3 Assistance in providing for reliability assurance in procurement plans.

When system hardware costing over $1,000,000 is involved, reliability personnel at the field installation shall assist in procurement-plan preparation with respect to arrangements for reliability monitoring. In the absence of reliability personnel, the field installation shall seek the advice and assistance of the Director, Reliability, Maintainability, and Quality Assurance, NASA Headquarters, Code QR, or a designee in the preparation of procurement plans.

Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities

1807.204 Responsibilities of contracting officers.

(a) The contracting officer shall transmit in writing to the cognizant inventory management/requirements office either the actual offeror responses or a summary of their salient points. This does not preclude preliminary oral consultations. The transmittal should be made within five working days after the closing date for receipt of offers; however, in negotiated acquisitions, if a response indicates a significant price variation, it should be transmitted immediately.

(b) All transmittals shall request the recipient to specify promptly whether the acquisition should be amended, cancelled, or concluded as is. Although award or negotiation need not be delayed pending a reply unless a potential for significant savings is apparent, such delay is encouraged when feasible in negotiated acquisitions in order to accommodate the intent and purpose of review of the data by the inventory management/requirements office. In sealed-bid acquisitions, the policy in FAR 14.404-1(a) applies.

Subpart 1807.3—Contractor Versus Government Performance

1807.303 Determining availability of private commercial sources.

NASA procedures for periodic inventories and reviews of commercial and industrial activities are contained in NMI 7410.3, Delegation of Authority for Acquisition of Commercial or Industrial Products or Services for NASA's Use.

1807.307 Appeals.

NASA appeals procedures are contained in NMI 7410.3.

Subpart 1807.70—Solicitation Provision

1807.7001 Estimate of work.

The contracting officer may insert a provision substantially as stated at 1852.207-70, Estimate of Work, in solicitations if:

(a) Mission suitability is considered more important than cost,

(b) There is no other method to define the amount of work contemplated, and

(c) Use of the provision is approved at least one level above the contracting officer.

Insert the total estimated value of the procurement.

Subpart 1807.71—Master Buy Plan Procedure

1807.7100 Scope of subpart.

This subpart prescribes the Master Buy Plan Procedure, contains requirements for furnishing advance information to NASA Headquarters on proposed procurements that meet the criteria in this subpart, and prescribes procedures for selecting those procurement documents that are to be subject to NASA Headquarters review and approval and those that are to be processed at the installation level. This subpart also prescribes the approval requirements for those documents that are to be processed at the installation level.

1807.7101 Policy.

The Master Buy Plan Procedure is designed to enable management to focus its attention on a representative selection of high-dollar-value and otherwise sensitive procurement actions without compromise of Headquarters visibility of or control over essential management functions.

1807.7102 Applicability.

(a) The Master Buy Plan Procedure applies to each negotiated procurement where dollar value, including the aggregate amount of follow-on procurements (see 1807.103(b)(2)), is expected to equal or exceed that in paragraph (b) of this section, for the installation making the award. In order to conduct the reviews required by FAR 8.307-1(b) for separate contracts, this procedure applies also to procurement of utility services when an areawide contract is not used and either—

(1) The annual cost of the services to be procured is estimated by the using installation, at the time of the initiation of the service or annual renewal of the expenditure, to exceed $150,000; or

(2) Except for communication services, a proposed connection charge, termination liability, or any other facilities charge to be paid (whether or not refundable) is estimated to exceed $75,000.

(b) The following are monetary limitations under the Master Buy Plan procedures:

(1) $10,000,000

(i) John C. Stennis Space Center

(ii) Headquarters Acquisition Division

(iii) Space Station Procurement Office

(iv) NASA Resident Office—JPL

For the purpose of the initial Master Buy Plan submission only, any of the above installations not having any procurements at or above the $10 million limitation shall submit the three largest procurements over $5 million.

(2) $25,000,000

(i) Ames Research Center

(ii) Goddard Space Flight Center

(iii) Johnson Space Center

(iv) Kennedy Space Center

(v) Langley Research Center

(vi) Lewis Research Center

(vii) Marshall Space Flight Center

(c) The monetary limitations in paragraph (b) of this section apply also to the following:

(1) Any supplemental agreement (except one providing only for the addition or deletion of funds for incremental funding purposes) that contains either new work, a debit change order, or a credit change order (or any combination/consolidation thereof), if either the new work or an individual change order or the aggregate of two or more actions equals or exceeds the dollar value in paragraph (b) of this section for the installation making the award.

(2) Any supplemental agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature that, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan Procedure, even though the monetary amount under consideration might not equal or exceed the installation's limitation in paragraph (b) of this section.

(d) The Master Buy Plan Procedure does not apply to termination settlement agreements (see FAR part 49).

[54 FR 28216, July 5, 1989, as amended at 55 FR 27088, June 29, 1990]

1807.7103 Submission, selection, and notification procedures.

1807.7103-1 Submission of Master Buy Plan.

(a) Prior to July 15th of every year, each installation shall submit to the Assistant Administrator for Procurement (Code HS) a Master Buy Plan (original and eight copies) for the next fiscal year, listing in it every known procurement that (1) meets the criteria in 1807.7102, (2) is expected to be initiated in that fiscal year, and (3) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan. The plan shall include any phased procurement whose overall value exceeds the dollar threshold in 1807.7102, even if the value of the initial phase is below the threshold. Initial phase for all procurements is considered to be Phase B or its equivalent.

(b) Plans shall be prepared in accordance with 1807.7107 and shall identify the individual procurement documents involved for every procurement listed. Procurement documents that may require Headquarters approval will be held in abeyance until receipt of the notification required by 1807.7103-3. This is not to preclude the planning for or initiation of such documents up to that point where Headquarters approval may be required.

(c) The fiscal year Master Buy Plan shall list those procurements selected for Headquarters review and approval from prior Master Buy Plans and amendments to Master Buy Plans that have not been completed. These procurements should be listed by the appropriate fiscal year Master Buy Plan; include the individual item numbers and current status of the individual procurement documents previously selected for Headquarters review and approval.

[54 FR 28216, July 5, 1989, as amended at 55 FR 12175, Apr. 2, 1990]

1807.7103-2 Submission of amendments to the Master Buy Plan.

(a) Procurements identified by installations after submission of their Master Buy Plan and meeting one of the criteria in 1807.7102 shall be submitted to Headquarters in accordance with 1807.7107. Such amendments shall be submitted sufficiently in advance of contract award date to allow Headquarters to select those procurement documents that will be subject to Headquarters review and approval without creating an unacceptable delay in contract placement.

(b) When timely submittal is not possible, the installation shall provide with the amendment a narrative explaining the circumstances leading to the late submittal. Master Buy Plan submissions should not be accomplished after the fact. A Master Buy Plan submission for a contract change order expected to meet the criteria in 1807.7102 shall be submitted to Headquarters immediately upon issuance of the change order.

1807.7103-3 Selection and notification procedures.

(a) The Assistant Administrator for Procurement or a designee shall select procurement documents from the Master Buy Plan and amendments to Master Buy Plans to receive Headquarters review and approval and shall designate source selection officials.

(b) When, subsequent to document selection or delegation, a procurement is changed (for example, increase or decrease in dollar amount, change in requirement), cancelled, superseded, deferred, or becomes no longer subject to the Master Buy Plan procedures in accordance with the criteria in 1807.7102, the installation shall immediately notify the Assistant Administrator for Procurement (Code HS), giving the reasons. The Assistant Administrator for Procurement or a designee shall notify the installation's procurement office in writing of any further action that may be required.

1807.7104 Procurement documents selected for Headquarters review and approval.

(a) *General.* The cognizant installation shall ensure that procurement documents selected for Headquarters review and approval under this procedure are submitted in accordance with this subpart.

(b) *Request for Proposals (RFP) review and approval.* Should the RFP be selected for Headquarters review and approval, the installation procurement office shall submit ten copies of the RFP to the Assistant Administrator for Procurement (Code HS), along with the source evaluation board evaluation methodology, including the rationale for selecting the associated evaluation criteria, the expected significant discriminators that should result, and the proposed method to be used in developing the source evaluation board probable cost comparison. Any other significant cost or other factors that are expected to have a bearing on the evaluation should be discussed.

1807.7105 Acquisition strategy meeting (ASM).

(a) As a result of the Master Buy Plan review, a decision to have an ASM at Headquarters may be made. The ASM is a meeting in which all parties from Headquarters and the installation with an interest in the procurement come together to discuss all of its aspects and to resolve any major issues before processing the formal documentation.

(b) The objective of an ASM is to provide sufficient business and programmatic planning as early as is feasible in the acquisition of a product or service. An ASM is conducted as an early planning session to develop an agreed-upon systematic approach to achieve an economical, efficient, and effective acquisition. Recommendations resulting from the ASM are advisory in nature. The ASM shall be scheduled by the Code HS procurement analyst responsible for the procurement. Attendance will be coordinated between the Code HS analyst and the installation's procurement office. It is expected that the following offices will participate:

(1) *Headquarters.* Cognizant program office; procurement; comptroller; safety, reliability, maintainability, and quality assurance; and legal;

(2) *Installation.* Project office, procurement, and other offices as determined by the installation.

(c) The meeting shall normally be chaired by the Director, Program Operations Division (Code HS) or the designee of the Assistant Administrator for Procurement (Code H).

(d) A summary of any decisions, actions, and conclusions as a result of the meeting shall be prepared by the Code HS analyst and be distributed to all participants for information and/or action.

1807.7106 Procurement documents not selected for Headquarters review and approval.

(a) Procurement documents not selected for Headquarters review and approval shall be processed at the installation level. For such procurements, the following documents, to the extent applicable, shall be approved by the head of the installation: procurement plans and prenegotiation positions. If the procurement is subject to the Source Evaluation Board Handbook, the head of the installation shall sign the source evaluation board appointment letter and shall normally be the source selection official.

(b) If the procurement is between $10,000,000 and $25,000,000 and the installation's Master Buy Plan limitation is $10,000,000, the head of the installation shall ordinarily be the source selection official, but may delegate this authority to cognizant management officials. The head of the installation may delegate the authority to approve procurement plans and to sign source evaluation board appointment letters to the installation's deputy or associate director. The head of the installation may redelegate the authority to approve prenegotiation positions to the level of the Procurement Officer.

(c) Requests for proposals shall be approved as directed by the Procurement Officer, commensurate with the sensitivity or significance of the procurement. Contracts (including supplemental agreements) not selected for Headquarters review and approval under the Master Buy Plan Procedure shall be subject to approval by the Procurement Officer. The signing of those documents by the Procurement Officer, as the contracting officer, constitutes such approval. The approvals required above may not be redelegated.

(d) Procurement documents authorized to be processed at the installation level will be subject to after-the-fact reviews by Headquarters personnel during normal procurement surveys or as the situation may otherwise indicate or through special reviews. Procurement delegations to the field installations may subsequently be rescinded if a Headquarters review is deemed appropriate.

1807.7107 Format of Master Buy Plan.

In accordance with the requirements of 1807.7103-1 and 1807.7103-2, Master Buy Plans and amendments to Master Buy Plans shall be prepared in accordance with the format illustrated in Table 1807-1.

TABLE 1807-1 TO 1807.7107.—FORMAT MASTER BUY PLAN PROCEDURES

Line Item No.: ____________

FY ____________

Page No.: ____________

Installation: ____________

Date: ____________

(1) Cognizant Headquarters Office	(2) Descriptive Title of Procurement	(3) Estimated Dollar Value	(4) ASM	(5) JOFOC	(6) Proc Plan	(7) RFP	(8) SEB	(9) Pre-Neg	(10) Contract Review	(11) Current Status	(12) Remarks

Instructions

General

1. Prepare on 8½" x 11" paper.

2. List only *one* procurement on each page and number each page. Sequentially number each procurement action with a two digit "Line Item Number" beginning with "01" for each annual submission and subsequent amendments.

3. For the initial submission only, list procurements and their current status from prior fiscal year(s) Master Buy Plans and amendments to MBPs that have not been completed.

4. Do not reproduce these instructions on the submission.

Supplementary instructions by heading number

(1) Include letter code and Headquarters contact, if known.

(2) Include an "N" to indicate new procurement or "FO" to indicate follow-on procurement.

(3) A range of dollar values may be used, if the exact value is unavailable. Express the range as $10M to $25M, $25M to $50M, and so forth in $25M increments. Include all phases of the procurement.

(4) Installation recommendation ("Y" or "N") that an Acquisition Strategy Meeting be held. (The final decision will be made by Headquarters upon review of the MBP submission).

(5)–(10) Use "X" to indicate applicable documents.

(11) Status should include scheduled date for next event. (Complete horizontally.)

(12) Include data considered pertinent and indicate expected date for placement of contract. If less than full and open competition is involved, indicate the authority being used, identify the firm(s) to which the procurement is being limited, and indicate the current status of the justification document. Include the name and FTS number of the cognizant installation procurement person. (Complete horizontally.)

Subpart 1807.72—Acquisition Forecasting

SOURCE: 54 FR 39370, Sept. 26, 1989, unless otherwise noted.

1807.7200 Scope of subpart.

This subpart prescribes the acquisition forecasting procedure required to comply with the Business Opportunity Development Reform Act of 1988.

1807.7201 Definitions.

Class of contracts means a grouping of procurements, either by dollar value or by the nature of supplies and services to be acquired.

Contract opportunity means planned new contract awards exceeding $25,000.

1807.7202 Policy.

As required by statute, it is NASA policy to:

(a) Prepare an annual forecast and semiannual update of expected contract opportunities or classes of contract opportunities for each fiscal year;

(b) Include in the forecast contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, may be capable of performing; and

(c) Make available such forecasts to industry.

1807.7203 Applicability.

This requirement applies to all known contract opportunities.

1807.7204 Responsibilities.

(a) NASA procurement officers shall furnish NASA Headquarters (Code HH) with the data required in 1807.7205 in accordance with the schedule in 1807.7206.

(b) In order to assist the centers in preparing their forecasts, the Assistant Administrator for Procurement (Code HM and Code HH) shall generate historical data on the class of contract opportunities from $25,000 to $100,000 in value for use in generating a projection for the coming fiscal year. This shall be forwarded by August 1 to the centers to be validated, revised as necessary, and included with the forecast of procurements made by NASA procurement officers. The Assistant Administrator for Procurement (Code HH) shall then prepare and distribute the consolidated annual forecast and the semiannual update.

1807.7205 Forecast data.

(a) The annual forecast shall contain—

(1) Validated historical data on the class of contract opportunities from $25,000 to $100,000;

(2) Identification of all known contract opportunities in excess of $100,000. Each action should be identified as one of the three broad categories of procurement—Research and Development, Services, or Supplies and Equipment;

(3) A brief narrative description of each contract opportunity not to exceed ten typed lines;

(4) An indication of the approximate dollar value for each reported contract opportunity within the following dollar ranges: $100,000 to $1,000,000; $1,000,000 to $5,000,000; and over $5,000,000;

(5) The anticipated time (by fiscal year quarter) for the issuance of the solicitation for each reported contract opportunity;

(6) Identification of each contract opportunity considered to be exclusively available for performance by small business concerns including those owned and controlled by socially and economically disadvantaged individuals;

(7) Identification of each contract opportunity as competitive or noncompetitive; and

(8) Identification of a point of contact and telephone number of a knowledgeable individual at the center regarding the entry for each contract opportunity.

(b) The semiannual report shall be an update of the data provided by the annual forecast. This update should provide information on new requirements not previously reported and on changes in data related to actions previously identified.

1807.7206 Schedule.

(a) *Submission of forecast data.* The data required for the forecasts shall be submitted to the Assistant Administrator for Procurement (Code HH) by—

(1) September 1 for the annual forecast; and

(2) March 15 for the semiannual update.

(b) *Distribution of forecast.* (1) Within 30 days of completion of an annual forecast or a semiannual update, the Assistant Administrator for Procurement (Code HH) shall furnish the forecast to—

(i) The NASA Director of the Office of Small and Disadvantaged Business Utilization (Code K); and

(ii) The Administrator of the Small Business Administration.

(2) The annual and semiannual annual forecasts shall be made available by Code K, Code HH, and the centers to industry upon request.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

1808.002 Use of other Government supply sources.
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1808.002-72 Acquisition of radioisotopes.
1808.002-73 Acquisition of liquid hydrogen.
1808.002-74 Acquisition of propellants.
1808.002-75 Acquisition of mercury.
1808.002-76 Contract clause.

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Subpart 1808.8—Acquisition of Printing and Related Supplies

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Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

AUTHORITY: 42 U.S.C. 2473 (c)(1).

SOURCE: 54 FR 28221, July 5, 1989, unless otherwise noted.

1808.002 Use of other Government supply sources.

1808.002-70 Procurement of materials from the surplus, strategic, and critical materials stockpile.

(a) The General Services Administration (GSA) is responsible for disposing of strategic and critical materials in excess of national stockpile requirements. These materials, primarily metals, ores, chemicals, and similar raw material items, are listed and described in a GSA bulletin disseminated periodically to procurement officers.

(b) Before initiating procurements of materials listed as being available from GSA, the contracting office should screen the list to determine whether the requirement can be met through transfer of material from GSA. Due consideration should be given to the quantity, quality, and location of the material and to the timeliness of its availability. Detailed information on excess material is available from GSA, Office of Stockpile Management, Room 5028, 18th and F Streets, NW., Washington, DC 20405.

1808.002-71 Acquisition of helium.

(a) NASA is required by Pub. L. 86-777 (50 U.S.C. 167a *et seq.*) to obtain its major requirements for helium from the Department of the Interior.

(b) Each contracting office shall obtain its requirements for gaseous helium from the Department of the Interior (Bureau of Mines) or another Government support activity supplying Bureau of Mines helium.

(c) Requirements for (1) liquid helium or (2) gaseous helium of a quality not supplied by the Bureau of Mines may be procured from commercial sources, provided such sources are qualified by the Bureau of Mines and included in the Bureau of Mines publication, "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies." Copies of this publication may be obtained from Bureau of Mines, Helium Operation, P.O. Box H4372, Herring Plaza, Amarillo, TX 79101.

(d) The contracting officer shall provide a copy of each contract or purchase order for the supply of helium from commercial sources to the Bureau of Mines, at the address in paragraph (c) of this section.

(e) The clause at 1852.208-83, Acquisition of Helium, specifies requirements for contractors consistent with this subsection.

1808.002-72 Acquisition of radioisotopes.

(a) DOE Form 5400.3, U.S. Department of Energy Isotope Order Blank, and NRC Form 313, U.S. Nuclear Regulatory Commission Application for Material License, shall be used to acquire radioisotopes, as stated on the back of DOE Form 5400.3. No other type of order blank, purchase order, or contract may be used in lieu of these forms.

(b) NRC Form 313 shall be filed with the Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, the Radioisotopes Licensing Branch, Nuclear Regulatory Commission, will issue a license to the applicant. After receipt of the license, a completed DOE Form 5400.3 (in duplicate, if the contracting office wants an accepted copy of the form back from the supplier), the license, and a Government bill of lading shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(c) The "Terms and Conditions" on DOE Form 5400.3 shall control all requisitions for radioisotopes purchased by NASA from Department of Energy Laboratories.

(d) NRC Form 313 and DOE Form 5400.3 shall be requisitioned directly from United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555.

1808.002-73 Acquisition of liquid hydrogen.

(a) To ensure that adequate supplies of liquid hydrogen are readily available to meet current and future program requirements, NASA has established contractual arrangements with various supply sources. These contracts shall be used to the maximum extent practicable in supplying both in-house and contractor requirements for liquid hydrogen.

(b) Requests for liquid hydrogen shall be submitted to the John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899, Attn: Director of Center Operations.

1808.002-74 Acquisition of propellants.

(a) *General.* The Department of the Air Force has assigned the operational authority and responsibility for acquiring and distributing missile propellants and related items to the San Antonio Air Logistics Center (SA-ALC), Kelly Air Force Base, Texas. Propellants (i.e., oxidizers and fuels), pressurants, and related materials are financed under a single Air Force appropriation designated the Missile Procurement Fund (MPF). Supplies are obtained by SA-ALC from Government-owned, contractor-operated plants and by consolidated acquisitions from industry. NASA and its contractors (when materials are Government-furnished) may acquire from SA-ALC the items listed in paragraph (j) of this section (except for liquid hydrogen; see 1808.002-73) on a reimbursable basis. The Air Force MPF shall be utilized as a supply source for propellants whenever there are economic or other advantages to the Government. Field installations and offices obtaining supplies from the MPF shall comply with the reporting requirements of paragraph (f) of this section.

(b) *Requests for acquisition.* To obtain the materials listed in paragraph (j) of this section from the Air Force MPF, NASA contracting offices will execute a NASA-Defense Purchase Request (NASA Form 523) (see 1853.303-523) and forward it to Headquarters, SA-ALC, Kelly Air Force Base, TX 78241, Attention: SFS. The following additional information should be provided on the form:

(1) Contract number (when material is required for use by a NASA contractor).

(2) Delivery address.

(3) Mode of transportation (rail, trailer, barge, etc). When the procurement request covers requirements for materials not previously forecasted or covers significant changes to previously reported requirements, SA-ALC should be notified immediately of such requirements.

(c) *Delivery requests.* (1) A delivery request is a call on the Air Force, made against a NASA-Defense Purchase Request (NASA Form 523), specifying the time and place of delivery. On the basis of the estimated requirements, the Air Force will notify NASA field installations and contractors of the name and address of the Air Force office or producing contractor's plant to which requests for delivery of materials shall be made. Delivery requests may be placed by any means of communication that time justifies; however, all verbal requests for delivery must be confirmed in writing within 24 hours. The delivery request, whether oral or written, must cite the NASA-Defense Purchase Request number under which the material is being ordered and contain the following information:

(i) Nomenclature and National Stock Number.

(ii) Quantity.

(iii) Program, project, and task.

(iv) Contract number (when material is required for use by a NASA contractor).

(v) Delivery address.

(vi) Dates of delivery.

(vii) Mode of transportation.

(viii) Location of weighing stations and scales (if weighing of the products before delivery is required).

(2) Each delivery request shall be numbered as follows to simplify identification and control: the last two digits of the calendar year; a dash; and a consecutive number beginning with 1 to run throughout the year (e.g., 89-5, for the fifth request made in 1989). Changes to a request are identified by adding an alphabetical designator beginning with (A) to the number. This system is not intended to replace or to interfere with existing NASA purchase order numbering or internal budget or accounting numbering procedures.

(d) *Receiving procedures*—(1) *Receiving documents.* Receipt of materials shall be evidenced on the receiving document received with the shipment by the signature of an individual authorized by NASA to receive materials from the Air Force. Every effort should be made to ensure that the NASA-Defense Purchase Request number is recorded on the receiving document before signing.

(2) *Weighing facilities.* Local weighing facilities (NASA-owned, contractor-owned, commercial, or State-operated) may be used to determine quantities of product received. If a discrepancy exists between the quantities shown on receiving documents and the quantities actually received—

(i) A certified weighing ticket evidencing actual (weight at destination shall be obtained; and)

(ii) A copy of the receiving document (AF Form 857 or DD Form 250) and the original weighing ticket shall be forwarded to Headquarters, SA-ALC, Kelly Air Force Base, TX 78241, Attention: ACFOM, identifying the discrepancy.

(3) *Distribution of receipts.* Copies of all receiving documents except the AF Form 857 shall be transmitted to the Headquarters, SA-ALC, Kelly Air Force Base, TX 78241, Attention: SACAOM. Receiving documents may be accumulated and submitted on the 10th, 20th, and last day of each month.

(e) *Billing.* The costs of materials obtained through the MPF are reimbursable. After delivery, a Standard Form 1080 (Voucher for Transfers Between Appropriations and/or Funds (Disbursement)), supported by documentary evidence of delivery, will be submitted by Headquarters, SA-ALC to the NASA installation designated in the NASA Form 523.

(f) *Reporting requirements.* (1) Field installations shall submit periodic estimates of requirements for materials listed in paragraph (j) of this section for all programs under their cognizance, including in-house contractor requirements. Headquarters Program Offices shall submit periodic estimates of requirements for any existing or potential programs that may not be known to or under the cognizance of a field installation. Reports shall be submitted in duplicate on AF Form 858, Forecast of Propellant Requirements.

(2) The reports shall be forwarded so as to reach Headquarters, SA-ALC, Kelly AFB, TX 78241, Attn: SFS, no later than June 1 and December 1. Supplemental reports advising of additions to or significant changes in previous reports may be submitted at any time. The reports, covering all materials listed in paragraph (j) of this section, due in June and December, shall begin with requirements as of the following July 1 and January 1, respectively, and shall cover a 3-year period. Requirements shall be shown by month for the first 6 months, and by quarters for the remaining 2½-year period.

(3) Estimated requirements and other pertinent data required from contractors shall be obtained on Air Force Form 858.

(g) *Report content.* Reports shall be made using a separate report form for each material and shall provide, for each item of material, the—

(1) Contract number;

(2) Program and/or project;

(3) Specific task within the project;

(4) End use when not associated with the named program or project;

(5) Contractor's name;

(6) Specific location of use (shipping destination); and

(7) Planned source of supply.

(h) *Basis for developing materials requirements.* In computing requirements, consideration shall be given to such elements as lead time, waste factors, transfer, and storage losses so that phased requirements reflect the total gross quantities required to be delivered to the use or storage site. Since the requirements estimates are being used by other Government agencies acting as supply sources to contract for materials, estimates must be as accurate as possible.

(i) *NASA coordination.* The Kennedy Space Center shall coordinate the review of all data and establish NASA policy and procedures. The data shall be used as the basis for NASA requirements reports to various Government agencies for planning and supply support.

(j) *Table of reportable materials.*

Ammonia, Technical (Anhydrous) (Low Oil Content) 99.97 percent purity, Spec 0-A-445
Argon Gas, 6000 PSI, AFPID 6830-5
Propellant, Ammonia, Liquid, Anhydrous 99.5 percent purity, Spec MIL-P-27406
Propellant, Chlorine Trifluoride, Spec MIL-P-81399
Propellant, Deuterium, Gaseous, AFPID 9135-20
Propellant, Fluorine, Gaseous, Spec MIL-P-27405
Propellant, Fluorine, Liquid, Spec MIL-P-27405
Helium, Technical Grade A, Spec BB-H-1168
Propellant, Isopropyl Alcohol, AFPID 9135-18
Propellant, Hydrazine, Standard Grade, Spec MIL-P-26536
Propellant, Hydrazine, Monopropellant Grade, Spec MIL-P-26536
Propellant, Hydrazine/Unsymmetrical Dimethylhydrazine, Spec MIL-P-27402
Propellant, Hydrogen, Gaseous, Type I, Spec MIL-P-27201

Propellant, Hydrogen, Liquid, Type II, Spec MIL-P-27201
Propellant, Hydrogen Peroxide, Spec MIL-P-16005
Propellant, Hydrogen Peroxide, Electrolytic Process, Spec MIL-P16005
Propellant, Jet Fuel, Grade RJ-1, Spec MIL-F-25558
Propellant, JPX, 50% UDMH-50% JP-4, Spec MIL-P-26694
Propellant, JPX, 17% UDMH-83% JP-4, Spec MIL-P-26694
Propellant, Kerosene, Grade RP-1, Spec MIL-P-25576
Propellant, Monomethyl Hydrazine, Spec MIL-P-27404
Propellant, Neon, Liquid, AFPID 9135-16
Propellant, Nitric Acid, Type IIIB, Spec MIL-P-7254
Propellant, Nitric Acid, Type III LS, Spec MIL-P-7254
Propellant, Nitric Acid, Type IV (High Density Acid), Spec MILP-7254
Propellant, Nitrogen Tetroxide (NTO) (MON-1) (MON-3), Spec MIL-P-26539
Propellant, Nitrogen Tetroxide (NTO), MIL-P-26539
Propellant, Nitrogen Tetroxide (MON-1), Spec MIL-P-26539
Propellant, Nitrogen Tetroxide (MON-3), Spec MIL-P-26539
Propellant, Oxygen, Grade B, Spec MIL-P-25508
Propellant, Oxygen, Grade A, Spec MIL-P-25508
Propellant, Oxygen, Grade F, Spec MIL-P-25508
Propellant Pressurizing Agent, Helium, Spec MIL-P-27407, 99.995 pct min assay
Propellant Pressurizing Agent, Nitrogen, Type II, Liquid Grade C, Spec MIL-P-27401
Propellant Pressurizing Agent, Nitrogen, Type I, Gaseous Grade A, Spec MIL-P-27401
Propellant Pressurizing Agent, Nitrogen, Type I, Grade B, Spec MIL-P-27401
Propellant Pressurizing Agent, Nitrogen, Type II, Grade A, Spec MIL-P-27401
Propellant Pressurizing Agent, Nitrogen, Type II, Grade B, Spec MIL-P-27401
Propellant, Unsymmetrical Dimethylhydrazine, Spec MIL-P-25604
Propellant, Nitrogen Trifluoride Spec MIL-P-87896
Propellant Pressurizing Agent, Argon, Liquid, AFPID 9135-19

1808.002-75 Acquisition of mercury.

(a) NASA is prohibited from purchasing mercury in quantities of 76 pounds or more from commercial sources without prior clearance from GSA.

(b) Mercury, minimum 99.9 percent pure (not triple distilled), in 76-pound flasks, is available for transfer from GSA stocks at fair market value.

(1) Requests for mercury by NASA installations for their use or for use by their cost-reimbursement type contractors shall be made to the Project Manager, Mineral and Ores, Property Management and Disposal Services, GSA, Washington, DC 20405. The Project Manager will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(2) Requests for clearance to purchase quantities of 76 pounds or more from sources other than GSA shall be submitted to the office in subparagraph (b)(1) of this section and must be accompanied by a statement of reasons why the available excess mercury is unsuitable for use by the requesting field installation.

1808.002-76 Contract clause.

The contracting officer shall insert the clause at 1852.208-83 in all solicitations and contracts requiring the procurement of helium.

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

In addition to the sources identified in FAR 8.103, information on availability of NASA excess property is maintained by the Installation Property Disposal Officer and the NASA Equipment Management System (NEMS) Coordinator.

Subpart 1808.3—Acquisition of Utility Services

1808.301 Definitions.

Multiple-service locations, as used in this subpart, means the various locations or delivery points in a contractor's service area to which services are provided under a single contract.

Utility suppliers, as used in this subpart, may be quasi-public service corporations, private concerns, municipalities, associations, or cooperatives. They generally operate in a franchised territory without competition, so they may frequently be in a sole-source position. Under common law, public utilities must render service at reasonable rates and without discrimination. Their operations, management, rates, and profits are usually regulated by Federal, State, or local regulatory bodies, but absence of a regulatory body does not necessarily mean a complete lack of control. Administrative remedies pursuant to enabling statutes may be pursued or complaints may be taken to a court of competent jurisdiction.

1808.303 General.

(a) Requirements for utility services shall be determined by technically qualified personnel who will assist the contracting officer as required. Before soliciting technical assistance outside the agency (see FAR 8.303(b)), technical personnel shall contact the Facilities Division (Code NX), NASA Headquarters.

(b) Appropriated funds may not be used to purchase electricity in a manner inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements (Pub. L. 100-202, Sec. 8093, 101 Stat. 1329-79). Before acquiring electric utility service, the contracting officer shall determine whether the manner of acquisition, in particular, competitive acquisition under FAR 8.304-5(d), would be inconsistent with state law. Section 8093 of Pub. L. 100-202 is not intended to affect transfers of electricity to agencies from Federal power marketing agencies or the Tennessee Valley Authority, such as NASA's power allocation from the Western Area Power Marketing Administration. Such transfers do not constitute "purchases" for purposes of section 8093.

1808.304 Acquiring utility services.

1808.304-2 GSA areawide contracts.

(a) GSA publishes a checklist of utility services available under its areawide public utility contracts. The checklist specifies contract numbers, expiration dates, companies, and areas served. Copies of the checklist may be obtained from GSA, Public Utility Services Division, Washington, DC 20405 (FTS 566-0901).

(b) In determining whether a GSA areawide public utility contract is adequate to meet requirements, procurement offices should consider:

(1) The areawide contract rates and volume of service required,

(2) Any unusual characteristics of the service required,

(3) Any special equipment or facility requirements,

(4) Any special technical contract provisions required, and

(5) Any other special circumstances.

(c) If a procurement officer finds that a separately negotiated contract would be more advantageous to the Government than the GSA areawide public utility contract, the procurement officer shall submit a request to the Assistant Administrator for Procurement, NASA Headquarters (Code HS), for a waiver of the requirement to use the GSA areawide public utility contract. The request shall explain the merit of a separately negotiated contract.

1808.304-4 Consolidated purchase, joint use, or cross-service.

(a) The Department of Defense (DOD) enters into areawide fuel oil and other energy-service contracts. DOD areawide contracts provide that the contractor shall, upon receipt of an order in the form prescribed by the contract, furnish the service involved without further negotiations as to rates and charges, in accordance with the established and filed rate schedules applicable to the service.

(b) When procuring utility services from another Government agency by cross-servicing, the procurement office shall use a memorandum of understanding specifying the services to be provided and the conditions under which they will be supplied. A Utility Service Narrative shall be submitted in accordance with 1808.307-70.

1808.304-5 Agency acquisition.

1808.304-570 Renewal of contracts.

(a) A contract may be renewed or extended by option, provided that the contract is not in effect for more than a total of 5 successive years.

(b) Contracting officers shall consider selecting an expiration date for the contract sufficiently after the end of the fiscal year to ensure that appropriations will be available when the option is exercised.

1808.304-571 Headquarters requirement for copies of contracts.

The contracting officer shall forward, promptly after execution, one copy of each contract, service authorization form, memorandum of understanding, and modification to the Assistant Administrator for Procurement, NASA Headquarters (Code HS) and to the Facilities Division, NASA Headquarters (Code NX).

1808.304-572 Contents of a negotiated utility service contract.

(a) All negotiated utility service contracts estimated to exceed $2,500 annually shall be written in accordance with the directions in paragraphs (a)(1) through (5) of this section:

(1) *SF 26.* Use Standard Form 26 (see FAR 53.215-1(b)).

(2) *Appendix A.* (i) Include the rate schedule, which shall consist of—

(A) The published rate schedule of the contractor approved or established by a Federal, State, or other regulatory body; or

(B) The rate schedule negotiated between the contractor and the Government.

(ii) The rate schedule shall bear the legend "Appendix A, attached to and made a part of Contract No. __________," and be entitled "Rate Schedule." Each page shall indicate its number and the total number of pages comprising Appendix A, as, for example, "page 1 of 3." In addition to stating the rate applicable to the contract, Appendix A shall include any applicable rules or regulations (whether established by the regulatory body, the contractor, or negotiation between the contractor and the Government) pertaining to the Rate Schedule. Appendix A may provide for payment to the contractor of a nonrecurring, nonrefundable fee not exceeding $1,000 for the costs of connecting the contractor's facilities to, and disconnecting them from, the Government's facilities, if the contract period is less than 6 months. In all instances where a connection charge, other than the fee described above, is involved, the "Connection Charge" clause (1852.208-77) and Appendix C (see subparagraph (a)(4) of this section) shall be included in the contract.

(3) *Appendix B.* Include the service specifications applicable to the contract, which shall consist of a specially drafted attachment to the contract bearing the legend "Appendix B, attached to and made a part of Contract No. __________," and the title of the appropriate service specifications. Each page shall indicate its number and the total number of pages comprising Appendix B, as, for example, "page 1 of 3." Such appendix shall contain as a minimum—

(i) The premises to be served;

(ii) An estimate of the service requirements;

(iii) The point of delivery to the Government;

(iv) A description of the service;

(v) A statement of how the service is to be measured for purposes of billing; and

(vi) A statement of the capacity and flow of the service.

(4) *Appendix C.* Include the connection charge schedule required whenever the contract includes the connection charge clause at 1852.208-77 or the termination charge clause at 1852.208-78. It shall bear the legend "Appendix C, attached to and made a part of Contract No. __________," and be entitled "Connection Charge Schedule." Each page shall indicate its number and the total number of pages comprising Appendix C, as, for example, "page 1 of 3." The appendix shall contain as a minimum—

(i) A detailed description of the new facilities to be furnished by the contractor; and

(ii) The agreed salvage value of these facilities.

(5) Include any contract clauses required by FAR 8.309 or 1808.309.

(b) Any negotiated utility service contract estimated not to exceed $2,500 annually shall consist of—

(1) Standard Form 26 (FAR 53.215-1(b));

(2) An Appendix A (see paragraph (a)(2) of this section); and

(3) Any contract clauses required by FAR 8.309 or section 1808.309 of this regulation.

1808.304-573 Authorization for procurement of wellhead natural gas.

Acquisition of wellhead natural gas and interstate transportation of the natural gas to locally franchised distribution utility companies' receipt points (city gate) is considered the procurement of supplies rather than the procurement of public utility services described in FAR subpart 8.3. Therefore, wellhead natural gas and interstate transportation of such gas should be obtained directly by NASA under applicable authorities and FAR procedures governing the acquisition of supplies. Redelivery of the gas from the city gate to the NASA facility is considered a utility service since it is provided only by the locally franchised utility. GSA is responsible for obtaining an appropriate contract for the redelivery service in accordance with FAR 8.304.

[54 FR 53630, Dec. 29, 1989]

1808.305 Rate increases.

(a) When the contractor notifies the contracting officer as provided in the Public Regulation and Change of Rates clause at 1852.208-71, or whenever the contractor requests that rate changes be negotiated, as provided in the Change in Rates clause at 1852.208-76, the contracting officer shall notify the Assistant Administrator for Procurement, NASA Headquarters (Code HS) and the Facilities Division, NASA Headquarters (Code NX). The notification shall include sufficient information to permit a determination of the monetary effect of the proposed changes, a recommendation under paragraph (a) (1) or (2) of this section, and the basisfor the recommendation.

(1) When notice is received that the contractor has filed an application for rate changes before the local regulatory body, the contracting officer shall recommend whether or not the Government should intervene at the hearing on the application. If it is recommended that the Government intervene, the recommendation shall be accompanied by a statement containing the basis for intervention and the extent to which the installation can support intervention by presenting testimony, preparing exhibits, and furnishing legal counsel.

(2) When notice is received that the contractor requests that rate changes be negotiated, the contracting officer shall recommend the position to be taken by the Government regarding the rate changes and state the extent to which installation personnel are available to support this position.

(b) The Assistant Administrator for Procurement, NASA Headquarters, with the technical assistance of the Facilities Division, NASA Headquarters, shall furnish the contracting officer a recommendation concerning the proposed rate changes and the extent to which NASA Headquarters will participate in the intervention before the local regulatory body or in negotiations with the contractor. Before recommending any action, the Assistant Administrator for Procurement, NASA Headquarters shall, as necessary, coordinate with other staff offices or divisions, or other Government agencies. The contracting officer shall await the instructions of the Assistant Administrator for Procurement, NASA Headquarters, for at least 30 calendar days before submitting the matter to GSA (see FAR 8.305(b)) or taking other action concerning the proposed rate changes.

1808.307 Precontract acquisition reviews.

1808.307-70 Utility service narrative.

(a) When required by FAR 8.307-1(b), and before initiating negotiations, the contracting officer shall submit a Utility Service Narrative for proposed procurements for new utilities services, renegotiations or extensions of existing utility services, or existing contracts that require a negotiation for change of rate schedules, to the Assistant Administrator for Procurement (Code HS), NASA Headquarters. The Utility Service Narrative shall include—

(1) A brief technical description of the service required or being furnished;

(2) Justification of the reasonableness of the proposed rate;

(3) An outline of the field installation's proposed negotiation tactics, basis for position, and any alternative position;

(4) An estimate of the annual cost of service; and

(5) Other related items, as applicable, such as connection charges, termination liability, facilities charges, requirement for Government capital costs, or any unusual factors affecting the procurement.

(b) The Assistant Administrator for Procurement (Code HS), with the coordination of the Facilities Engineering Division (Code NX), will review the information submitted under paragraph (a) of this section. If NASA Headquarters desires to participate in the negotiations, the Assistant Administrator for Procurement (Code HS), NASA Headquarters, shall inform the contracting officer within 30 days after receipt of the Utility Service Narrative.

1808.307-71 Contracts requiring Headquarters approval.

Contracts and supplemental agreements for utility services shall be submitted to the Assistant Administrator for Procurement, NASA Headquarters (Code HS), for approval as required by 1804.7205 and 1807.71.

1808.309 Contract clauses.

As prescribed below, the contracting officer shall insert the following clauses in solicitations and negotiated contracts for utility services. These clauses supplement those prescribed elsewhere in the FAR or this Regulation:

(a) Insert the clause at 1852.208-70, Rates.

(b) Insert the clause at 1852.208-71, Public Regulation and Change of Rates, except that the clause at 1852.208-76, Change in Rates, shall be used if—

(1) The rates applicable to the service furnished under the contract are negotiated between the contractor and the Government without the approval of any Federal, State, or local regulatory agency;

(2) The service to be furnished under the contract is otherwise not subject to regulation by any Federal, State, or local regulatory agency; or

(3) The contractor also acts as the local public regulatory agency and its decisions are not subject to review by a higher regulatory agency.

(c) Insert the clause at 1852.208-72, Change in Class of Service, in solicitations and negotiated contracts estimated to exceed $2,500.

(d) Insert the clause at 1852.208-73, Contractor's Facilities, in solicitations and negotiated contracts estimated to exceed $2,500. Insert the clause at 1852.208-80, Contractor's Facilities (Short Form), when the estimated annual cost is $2,500 or less.

(e) Insert the clause at 1852.208-74, Technical Provisions, in solicitations and negotiated contracts estimated to exceed $2,500.

(f) Insert the clause at 1852.208-75, Renewal of Contract, whenever it is desirable that the utility service be provided under the same terms and conditions for more than 1 year (see 1808.304-570).

(g) Insert the clause at 1852.208-77, Connection Charge, when (1) a connection charge is to be paid by the Government and (2) the conditions permitting the incorporation of a nonrecurring, nonrefundable fee in Appendix A, the rate schedule applicable to the contract, do not exist. Also attach Appendix C (see 1808.304-572(a)(4)).

(h) Insert the clause at 1852.208-78, Termination Charge, when payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities. Use of this clause is subject to Master Buy Plan approval requirements (see 1807.71). Also attach Appendix C.

(i) Insert the clause at 1852.208-79, Multiple Service Locations, when it is desired to provide for one or more possible alternative service locations.

Subpart 1808.4—Ordering From Federal Supply Schedules

1808.404 Using schedules.

1808.404-3 Requests for waivers.

(a) The head of the NASA office initiating the procurement request or a designated representative shall furnish the NASA contracting office a signed statement identifying the supplies or services to be purchased and explaining why similar items listed in the applicable schedule will not meet the requirement.

(b) If a waiver is not granted, the case shall be referred to the Assistant Administrator for Procurement for a final decision as to whether the nonschedule item will be purchased. The Assistant Administrator for Procurement shall promptly notify the Commissioner, Federal Supply Service, GSA, and the contracting office of the decision.

1808.405 Ordering office responsibilities.

1808.405-1 Ordering from multiple-award schedules.

(a) If NASA can buy from a schedule contractor for substantially less than the schedule price, the procurement shall be accomplished at the better price. A copy of the order shall be forwarded to GSA in accordance with FAR 8.405-1(d).

(b) The following factors shall be considered when deciding to buy a higher-priced item:

(1) Does its longer useful life justify the higher price?

(2) Do warranties justify the higher price?

(3) Does the availability or cost of maintenance justify the difference in price?

1808.405-2 Order placement.

Delivery orders shall be issued on Optional Form 347 or an installation-prescribed form as specified in FAR 8.405-2.

Subpart 1808.6—Acquisition From Federal Prison Industries, Inc.

1808.605 Clearances.

(a) NASA purchase orders or contracts written pursuant to a general or blanket clearance need not be supported by a copy of the clearance, but the clearance number must be cited on the purchase order or contract as well as on the initial voucher.

(b) If a formal clearance has been requested, the contracting officer may not consummate the purchase before the formal clearance is issued. A copy of the clearance certificate must be attached to the initial voucher.

(c) When disputes under FAR 8.605(c) occur, the contracting officer shall refer the matter to the Assistant Administrator for Procurement (Code HP) for review and any further action. Such referrals shall include a complete statement of the attempts made to resolve the matter.

Subpart 1808.7—Acquisition From the Blind and Other Severely Handicapped

1808.705 Procedures.

1808.705-1 General.

(a) When supplies require overseas packaging or packing or are required in carload lots, as described in the Consolidated Freight Classification for the commodity concerned, procurement shall follow the procedure in FAR 8.705-3(b).

(b) The Federal Standard Requisitioning and Issue Procedure (Federal Property Management Regulation, subpart 101-26.2) shall be used to obtain workshop-produced supplies from GSA supply distribution facilities.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy.

Approval of printing supplies or services in contracts shall be in accordance with NMI 1490.1, NASA Printing Management Program.

1808.870 Contract clause.

The contracting officer shall insert the clause at 1852.208-81, Printing and Duplicating, in solicitations and contracts where there is any requirement for significant printing and/or reproduction. Printing in excess of that described in paragraph (c) of the clause constitutes significant printing and/or reproduction.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

NASA procedures for leasing motor vehicles from GSA or commercial sources are contained in NMI 6720.1, NASA Motor Vehicle Management.

PART 1809—CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

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Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

AUTHORITY: 42 U.S.C. 2473 (c)(1).

SOURCE: 54 FR 28227, July 5, 1989, unless otherwise noted.

Subpart 1809.1—Responsible Prospective Contractors

1809.102 Applicability.

1809.102-70 Procurements from Canadian sources of supply.

(a) Awards to Canadian sources of supply are subject to FAR subpart 9.1. A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted as responsible by the contracting officer under the provisions of FAR 9.104-4(a). When the firm proposed by CCC is so accepted, preaward survey forms need not be completed.

(b) The contracting officer, when the CCC proposal is not consistent with other available information, shall request from CCC and any other appropriate sources additional information or plant surveys needed in order to make the determination of responsibility required by FAR 9.103(b). The additional data may be requested on the preaward survey forms or on any other forms. Upon request, CCC shall be furnished the reasons for the rejection of its proposed firm.

1809.106 Preaward surveys.

1809.106-1 Conditions for preaward surveys.

In addition to the circumstances enumerated in FAR 9.106-1(a), preaward surveys normally are not required when—

(a) The contract is for study or research only;

(b) The data necessary for a responsibility determination are available from other sources;

(c) The pending contract will be a definitive contract superseding a letter contract;

(d) An order is placed under an existing contract; or

(e) The source has been recommended by a NASA Source Evaluation Board.

1809.106-70 NASA Preaward surveys.

(a) *Preaward survey procedures.* Preaward surveys shall be conducted in compliance with FAR subpart 9.1 and this section 1809.106-70.

(b) *General.* Paragraphs (c) through (k) of this section establish detailed procedures for conducting preaward surveys, including preaward surveys conducted by NASA, those conducted by another agency for NASA, and those jointly conducted.

(c) *Definitions.*

Monitor, as used in this subsection, means the person designated to administer the preaward survey in accordance with paragraph (f)(2) of this section.

Preaward survey review board means a board established to review and approve or disapprove preaward survey reports.

Team coordinator, as used in this paragraph subsection, means the person designated by the monitor to coordinate the on-site survey, arrange for plant visits, and conduct team conferences as necessary before, during, and after the plant visit.

(d) *Procedure for requesting preaward survey.* (1) A preaward survey shall be requested on Standard Form 1403, Preaward Survey of Prospective Contractor (General). The requestor shall indicate in section III of the SF 1403 the scope of the survey desired. Factors requiring emphasis not enumerated in section III should be listed under block 20.H. of that section. The "Walsh-Healey Public Contracts Act" block of section I is for information purposes only. If information is needed for a determination on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block 20.H. of section III. A survey may be requested by telegraphic communication containing the data required by Sections I, II, and III of SF 1403. A survey may be requested by telephone but shall be immediately confirmed on SF 1403. Unless previously furnished, a copy of the solicitation and such drawings and specifications as the contracting office deems necessary shall be supplied with the preaward survey request.

(2) Any information indicating previous unsatisfactory contract performance shall be furnished the survey activity with the preaward survey request, unless it is known that the survey activity already has this information.

(3) The request for preaward survey shall be forwarded in an original and three copies to the responsible survey activity. If the survey activity is a DOD agency, the request is to be sent to the appropriate office shown in the DOD Directory of Contract Administration Services Components, DOD 4105.59-H, Attn: Preaward Survey Monitor. The date on which the completed survey report is desired should be indicated; DOD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency.

(e) *Scope of survey.* (1) A complete survey encompasses:

(i) Investigation, to the extent applicable to the proposed contract, of the factors listed in section III of SF 1403, together with other requirements of special inquiry as requested by the contracting officer, and

(ii) Submission of appropriate findings.

(2) A partial survey encompasses:

(i) Investigation of those factors referenced in paragraph (e)(1) of this section that are specifically requested by the contracting officer and any other factors considered advisable by the activity conducting the survey, and

(ii) Submission of appropriate findings.

(3) The activity conducting the survey may execute and transmit to the contracting officer a short-form preaward survey report when sufficient current favorable information is available to recommend award without a formal survey. The SF 1403 will be used as the survey report in accordance with procedures outlined in paragraph (f)(1)(iv) of this section. If the contracting officer needs additional information on contractor capability, the activity conducting the survey may be so advised, and a detailed survey report shall be provided.

(f) *Contracting office procedure*—(1) *General.* (i) Preaward surveys shall normally be conducted within seven working days after receipt of the request and in the detail requested by the contracting officer. In unusual situations, reports of surveys may be requested in a shorter time if the situation so warrants. Qualified specialists responsible for the factors referenced in paragraph (e)(1) of this section shall participate as required.

(ii) Representatives of the contracting office and other activities shall participate in preaward surveys when requested by the contracting officer or as desired by the contracting office.

(iii) If the preaward survey cannot be accomplished within the time allowed, the contracting officer shall be so notified. If the date is not extended, the preaward survey monitor shall supply a definite recommendation by the date required, based on the material at hand or developed by that time. The basis for the recommendation and the factors for which no data or only partial data could be obtained shall be indicated.

(iv) When the activity conducting the survey possesses sufficient current favorable information about an offeror to recommend award without performing a formal survey, a short-form preaward report consisting solely of SF 1403 may be executed and forwarded to the contracting officer unless the contracting officer has requested additional information (see paragraph (e) of this section). Sections III and IV of the SF 1403 shall be completed and the following statement shall be stamped in block 23, the "Remarks" portion of section III: SHORT-FORM PREAWARD REPORT. Pursuant to 1809.106-70(e)(3), complete award is recommended.

(2) *Designation of preaward survey monitor.* An individual within each procurement office performing preaward surveys shall be designated as the preaward survey monitor. The monitor shall administer the preaward survey from the receipt of the request through the issuance of the final report to ensure appropriate coverage and maximum efficiency. The monitor shall take the actions listed in paragraphs (f)(2) (i) through (xiii) of this section:

(i) Receive all incoming preaward survey requests.

(ii) Ascertain whether the prospective contractor is included on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs for any reason, including those attributable to equal employment opportunity practices. (If the prospective contractor is listed, the contracting officer shall be promptly advised and the preaward survey shall not be completed, unless specifically requested by the contracting officer.)

(iii) Compare the survey request with the requirements of the solicitation.

(iv) Determine the need for an on-site survey after reviewing the type and quantity of items or services involved, previous experience with the firm, the technical and schedule requirements, and the extent of other information currently available. If an on-site survey has been requested and sufficient information is already available in the contracting or other offices (e.g., DOD contract administration office), the monitor shall ask the contracting officer whether an on-site survey must nevertheless be conducted, and for the specific elements to be covered.

(v) Determine and advise the organizational segments of the installation (e.g., engineering, production, reliability and quality assurance, and contract administration) that will furnish team members.

(vi) Provide team members—

(A) The date on which the information is required from each organizational segment;

(B) Identification of the portion of the survey for which each organizational segment is responsible;

(C) Information on whether an on-site survey of the prospective contractor's facility is contemplated (this is subject to later modification on the basis of information supplied by team members);

(D) Any special terms and conditions noted in the solicitation; and

(E) Any other information or guidance the particular request may require.

(vii) After discussion with appropriate organizational segments, designate the team coordinator.

(viii) Arrange for required audit and other external assistance. For example, when award depends upon the contractor's having an adequate cost accounting system for proper postaward administration of the contract, the cognizant audit agency shall be responsible for the system review, evaluation, and conclusive recommendation (SF 1408 is provided for this purpose).

(ix) Coordinate any participation where the preaward survey is being performed for another NASA installation.

(x) Receive reports of the individual team members and review them for completeness and adequate substantiation.

(xi) Resolve questions regarding technical details with responsible specialists.

(xii) Report those applicable procedures of the prospective contractor that have been reviewed by Government personnel (e.g., procurement system, estimating system, accounting system, control of Government property, and quality program).

(xiii) Assemble all necessary survey data into a report, including a recommendation as to award, and submit it to the chairperson of the preaward survey review board.

(3) *Designation and responsibilities of team coordinator and members.* (i) When an on-site survey by a team is necessary, members should include specialists qualified to evaluate all appropriate phases of the firm's capabilities. The team coordinator shall arrange for the team's visit to the site, direct the team's efforts, and conduct team conferences for the purposes listed in paragraphs (f)(3)(i) (A) through (C) of this section:

(A) Arriving at uniform interpretations before holding discussions with the prospective contractor's management.

(B) Briefing team members on their interviews and discussions with officials of the firm before making the on-site survey. Members shall not refer to or comment on the possibility that award will or will not be made to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas that in the opinion of the team member require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.

(C) Arranging for discussions among members during and after the on-site survey to ensure that evaluations by individual specialists are integrated, coordinated, and complete.

(ii) When an on-site survey is required for only one aspect of the prospective contractor's capability, a qualified specialist shall be designated to conduct the on-site portion of the survey. One specialist may be designated to investigate more than one aspect when it is within the specialist's capability.

(4) *Preaward survey review board.* (i) A preaward survey review board shall be formally established to review and approve survey reports before they are transmitted to the contracting officer.

(ii) The board shall be composed of senior specialists representing each of the major functions normally associated with preaward surveys, one of whom shall be designated chairperson. Flexibility of membership shall be provided by designating alternates and by establishing the criteria or conditions governing the need for occasional special technical representation. Membership on the board shall be in addition to the members' regular duties.

(g) *Steps for survey performance.* The three steps in performing a preaward survey are the—

(1) Preliminary analysis;

(2) Development and evaluation of information; and

(3) Preparation and review of the preaward survey report.

(h) *Preliminary analysis.* The request (SF 1403, sections I, II, and III) shall be reviewed to establish basic administrative information and the factors to be investigated. The solicitation shall then be reviewed to ascertain those general and special requirements having a significant bearing on determining contractor responsibility. Examples are the nature of the product or services, applicable specifications, delivery schedule, documentation requirements, property control requirements, and financing aspects.

(i) *Development of information*—(1) *Review of available data.* Information already available in the contracting office pertaining to the prospective contractor and its past performance shall be reviewed. Prior preaward survey reports and contractor performance records shall be examined and considered in support of preaward survey recommendations. If the prospective contractor has current or contemplated Government contracts, the files should be checked for information regarding similarity of product, current status of contracts, quality control experience, and financial status.

(2) *Development of additional data.* (i) When appropriate, the contracting office shall supplement the data on hand with any additional information required from other Government sources and from commercial sources, such as banks, business associates, and credit rating and reporting agencies.

(ii) An on-site survey shall be performed when sufficient information is not developed as a result of actions taken under paragraphs (i)(1) and (i)(1)(i) of this section.

(iii) A narrative covering each factor investigated shall be referenced in section III of SF 1403 and appended to the form. This narrative shall include detailed discussion supporting findings of both satisfactory and unsatisfactory conditions and shall include reasons for all stated conclusions.

(iv) When a prospective contractor proposes to acquire additional resources essential to performance of the proposed contract, the activity conducting the survey shall as a minimum obtain and evaluate—

(A) An itemized list of the required resources;

(B) A planned method of acquisition; and

(C) A schedule for acquisition of resources.

(v) Failure to meet commitments on previous contracts shall be documented in the current preaward survey report and considered in the final recommendation.

(j) *On-site surveys*—(1) *Interview, investigation, and review.*—(i) *General.* An on-site survey consists of an interview with representatives of the prospective contractor and, normally, an investigation of its resources and procedures.

(ii) Interview with management. Management officials of the appropriate level authorized to represent the prospective contractor should be interviewed. The prospective contractor's background shall be reviewed and as much history recorded as is necessary to reflect the soundness and reputation of the firm's operation.

(A) The organizational structure of the facility is the basis for management's control and must be reviewed. Assignment of definite tasks and responsibilities should be checked.

(B) Lack of understanding or misinterpretation of the solicitation often results in delinquent contracts and leads to default actions. Therefore the solicitation shall be discussed with the prospective contractor to ensure understanding of its requirements, including its technical aspects, such as drawings, specifications, prototype, technical data, testing, packaging, and the Government's right to use technical data in accordance with the terms of the solicitation. Any misinterpretations of the requirements of the solicitation that could adversely affect performance, or refusal by the prospective contractor to furnish required data, should be brought to the immediate attention of the monitor by the team coordinator. The monitor shall, in turn, promptly advise the contracting officer.

(iii) Investigation of resources and review of procedures. The resources the prospective contractor intends to utilize shall be inspected, analyzed, and compared with overall plans for performing. Procedures relating to performance of the proposed contract shall be reviewed for adequacy.

(iv) Specific factors to be considered. In the course of developing information, those factors described in paragraphs (j) (2), (3), and (4) of this section, and all others needed to provide the report and recommendations in the detail and to the extent required by the contracting officer, shall be considered.

(2) *Production*—(i) *General.* The production portion of the on-site survey consists of an evaluation of the prospective contractor's ability to manufacture the products or accomplish the tasks in accordance with the specifications and delivery schedule of the proposed contract. To achieve the objectives of this portion of the on-site survey, the production plan shall be reviewed, production resources ascertained, and the plan related to these resources.

(ii) *Obtaining the production plan.* The prospective contractor's production plan for meeting the delivery schedule shall be ascertained. The principal milestones within the production plan shall be established, along with target dates for achievement. These target dates must support the delivery schedule. The controls to be utilized in order to gear and hold the manufacturing effort to the target dates for the principal milestones shall be analyzed for suitability.

(iii) *Ascertaining production resources.* The information necessary to prepare SF 1404 and SF 1405 shall be obtained by discussion with appropriate management personnel of the prospective contractor. This information shall be verified, when necessary, by physical inspection of the manufacturing plant and evaluated in terms of suitability to manufacture the required items.

(iv) *Relating production plans to production resources.* When necessary, representatives of the prospective contractor shall be requested to advise how in-house and subcontractor production resources described in sections II, III, IV, and V of SF 1405 will be allocated and utilized in order to achieve the target dates for the principal milestones. Pertinent to this discussion is an analysis of other projects and contracts that will compete for utilization of those resources during the period specified by the prospective contractor's production plan. The information developed as a result of equating the production plan and production resources of the prospective contractor should enable the contracting office to determine whether or not—

(A) The resources the prospective contractor is planning to use are suitable for the job;

(B) The prospective contractor will be capable of properly controlling, maintaining, protecting, and using Government property;

(C) The planning and scheduling of effort will result in timely accomplishment of the principal milestones; and

(D) Achievement of the principal milestones will result in timely delivery.

(3) *Quality assurance.* (i) The standing of the quality assurance organization in the prospective contractor's overall organization must be evaluated. An inspection or quality control function that reports to some other organizational segment (such as production) instead of to top management may be undesirable. The experience of the company's inspection or quality control personnel with the same or similar items shall be evaluated.

(ii) To evaluate the prospective contractor's ability to comply with quality control or inspection requirements, team members shall review—

(A) Methods currently utilized to control product quality, as reflected by a documented or verifiable inspection system or quality program plan;

(B) Personnel on hand and available (report both trained and untrained);

(C) Inspection and test equipment on hand and available;

(D) Quality, identification, and storage of materials;

(E) Physical arrangement of plant;

(F) Tool and gauge control; and

(G) Test and inspection records.

(4) *Financial*—(i) *General.* The normal procedure for determining a prospective contractor's financial capability is initial presurvey planning, followed by verification of financial data as required. The extent of the review and analysis of financial matters shall be governed by the nature of the proposed contract. In certain instances, a sound decision may be possible after a relatively simple review of a company's financial position and production commitments. Under other circumstances, a more comprehensive review and analysis will be required.

(ii) *Procedure.* Actions to be taken in determining the prospective contractor's financial capability (SF 1407) include the following:

(A) The latest balance sheet and profit and loss statement shall be reviewed. Items indicative of the soundness of the prospective contractor's financial structure include rates and ratios, working capital as represented by current assets over current liabilities, and financial trends such as net worth, sales, and profit.

(B) The method of financing the contract shall be evaluated. If sources of outside financing other than the Government are indicated, their availability should be verified.

(C) When financial aid from the Government is to be obtained, the necessity for it should be verified. Review shall be made concerning the applicability of such financing as progress payments or guaranteed loans.

(k) *Evaluating data and preparing the report*—(1) *Findings and recommendations of team members.* When the required information has been gathered, each participant shall (i) analyze it and evaluate the prospective contractor's capability to perform with respect to the functions or elements investigated and (ii) provide his or her findings and recommendations to the monitor on one or more of the appropriate forms (see FAR 9.106-4(a)) or on an attachment or attachments. If a negative reply is recorded, or where doubt exists, an explanation must substantiate the entry. If a detailed analysis is needed or additional significant information is pertinent, the form should be supplemented by a narrative report.

(2) *Monitor's evaluation and recommendation.* On the basis of all the information received, the monitor shall thoroughly review and evaluate the findings and recommendations and forward the report to the chairperson of the review board with (i) a summary of the monitor's findings and (ii) a recommendation concerning award, which shall be supported by a statement of justification and shall, if the prospective contractor is a small business concern, be coordinated with the cognizant small business specialist.

(3) *Review board action.* Upon receiving each preaward report, the chairperson of the review board shall determine the extent of review board action. The requirements of paragraph (f)(4) of this section may be satisfied at the chairperson's discretion by—

(i) Action by the chairperson alone;

(ii) Informal contact by the chairperson with one or more of the board members; or

(iii) Formal action by the entire board.

(4) *Final actions.* Following the action by the review board, the monitor shall forward the report directly to the contracting officer. When advance reports are made by telegraphic communication or telephone, they shall be confirmed in writing without delay. The monitor shall follow up on any requirements for the submission of supplemental reports.

[54 FR 28227, July 5, 1989, as amended at 54 FR 39370, Sept. 26, 1989; 55 FR 27088, June 29, 1990]

Subpart 1809.2—Qualification Requirements

1809.200 Scope of subpart.

This subpart prescribes policies and procedures that, like those of FAR Subpart 9.2, are to be followed in the use of qualified products lists for procurement of microcircuits as authorized by NMI 5320.5, Basic Policy for Electronic Parts, and NMI 5320.6, Implementation of NASA Standard Parts Program.

1809.202 Policy.

(a) Authority regarding agency head actions under FAR 9.202(a) is delegated to the cognizant technical activity, with approval by the installation's competition advocate.

(b) The approval authority of FAR 9.202(e) is delegated to the installation's competition advocate. Requests shall be prepared by the cognizant requirements office and submitted via the procurement officer.

1809.203 QPL's, QML's, and QBL's.

1809.203-70 General.

(a) The Director, Reliability, Maintainability and Quality Assurance Division (Code QR), is responsible for justifying, determining, and approving NASA's need for inclusion and continued use of qualification requirements in specifications under the NASA Microelectronics Reliability Program.

(b) Prior to the procurement of Class "A" microcircuits, as defined in NHB 5300.4(3F), the determination required by paragraph 3F103-2 of that handbook shall be made in writing by an authorized NASA field installation official.

(c) Copies of NHB 5300.4(3F) may be purchased by the public from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

1809.203-71 Waiver of qualification requirements.

When procuring a product under a specification that includes qualification requirements either for the end item or for components of the end item, the NASA installation conducting the procurement can waive the qualification requirements. Directing a waiver of the end item qualification requirement constitutes adequate authorization for waiver of product qualification requirements. When a waiver has been granted, the solicitation shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the procurement (see FAR subpart 5.2).

1809.206 Acquisitions subject to qualification requirements.

1809.206-1 General.

(a) The emergency determination authority specified at FAR 9.206-1(b) is delegated to the installation's competition advocate. Requests for determination shall be prepared by the cognizant requirements office and submitted through the procurement officer.

(b) Requests not to enforce a qualification requirement in a non-emergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety, Reliability, Maintainability and Quality Assurance, (Code Q).

(c) Under FAR 9.206-1(c), if an offeror seeks to demonstrate its capability, both the product and the producer must meet the established standards.

1809.206-70 Small businesses.

If a small business otherwise eligible for award has been placed in a special status on a Qualified Products List (see NHB 5300.4(3F)) established as a part of the NASA Microelectronics Reliability Program and the contracting officer determines that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR subpart 19.6 are applicable.

1809.206-71 Contract clause.

When qualified products (end items or components of end items) are being procured, the contracting officer shall insert the clause at 1852.209-70, Product Removal from Qualified Products List, in the solicitation and in the resulting contract.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.402 Policy.

For purposes of FAR subpart 9.4 and this subpart, the Assistant Administrator for Procurement is the "debarring official," the "suspending official," and the agency head's "designee."

1809.404 Parties excluded from procurement programs.

(a) The Office of Procurement (Code HP) is responsible for taking the actions enumerated under FAR 9.404(c).

(b) In compliance with FAR 9.404(c)(5), contracting officers shall consult the list entitled Parties Excluded from Procurement Programs, which is contained in the GSA publication entitled, Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs, to ensure that they do not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, except as provided in FAR 9.405.

[54 FR 39370, Sept. 26, 1989, as amended at 55 FR 27088, June 29, 1990]

1809.405 Effect of listing.

If it is believed that a new contract or subcontract must be awarded to a firm on the list of Parties Excluded from Procurement Programs, the procurement officer shall prepare a request for a determination as set out in 1809.405-1(b) below and forward it to the Assistant Administrator for Procurement (Code HP) for approval.

[54 FR 39370, Sept. 26, 1989]

1809.405-1 Continuation of current contracts.

(a) The contracting officer may terminate a contract under FAR 9.405-1(a) if it is in the best interest of the Government to do so, unless directed otherwise by the Assistant Administrator for Procurement.

(b) If it is believed that an existing contract or subcontract with a contractor on the list of Parties Excluded from Procurement Programs must be renewed or otherwise extended, the procurement officer shall prepare a request for a determination with all necessary support documentation and forward it to the Assistant Administrator for Procurement (Code HP) for approval. Some examples of circumstances that may constitute a compelling reason under FAR 9.405(a) or 9.405-1(b) for award, renewal, or extension include the following:

(1) The property or services to be acquired are available only from the listed contractor.

(2) The urgency of the requirement dictates that NASA deal with the contractor.

(3) Other reasons related to the national defense or program requirements that necessitate continued business dealings with the listed contractor.

[54 FR 39370, Sept. 26, 1989]

1809.405-2 Restrictions on subcontracting.

When a subcontract subject to contracting officer consent must be awarded to a listed contractor, the procurement officer shall prepare a request for a determination with all support documentation and forward it to the Assistant Administrator for Procurement (Code HP) for approval. Some examples of circumstances that may constitute compelling reasons are cited in 1809.405-1(b).

[54 FR 39371, Sept. 26, 1989]

1809.406 Debarment.

1809.406-3 Procedures.

The report required by FAR 9.406-3(a) shall be forwarded by the procurement officer to the Assistant Administrator for Procurement (Code HP) in accordance with 1809.470.

1809.407 Suspension.

1809.407-3 Procedures.

The report required by FAR 9.407-3(a) shall be forwarded by the procurement officer to the Assistant Administrator for Procurement (Code HP) in accordance with 1809.470.

1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.

1809.470-1 Situations requiring reports.

A report incorporating the information required by 1809.470-2 below shall be forwarded by the procurement officer to the Assistant Administrator for Procurement (Code HP) when a contractor—

(a) Has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 and 9.407-2; or

(b) Is suspected of attempting to evade the prohibitions of a debarment or suspension imposed under the FAR or this Regulation by changes of address, multiple addresses, formation of new companies, or other devices.

1809.470-2 Contents of reports.

Each report shall be coordinated with local counsel and shall include substantially the following information, if available:

(a) Name and address of the contractor.

(b) Names of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) A description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols, the amount of each contract, the amounts paid the contractor and still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, their amount, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on them.

(h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide the evidence upon which the indictment or conviction is based.

(i) A recommendation as to the continuation of any current contracts.

(j) An estimate of any damages, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.

(k) The comments and recommendations of the contracting officer and local counsel as to:

(1) Whether the contractor should be suspended or debarred,

(2) Whether any limitations should be applied to such action, and

(3) The period of any debarment.

(l) As an enclosure, a copy of the contract(s) or pertinent excerpts, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1809.470-3 Addresses and copies of reports.

Reports, including enclosures, shall be submitted in duplicate to the Assistant Administrator for Procurement (Code HP), with an additional copy to the Office of General Counsel, NASA Headquarters (Code G).

Subpart 1809.5—Organizational Conflicts of Interest

1809.500 Scope of subpart.

The Assistant Administrator for Procurement has authorized the procurement officer to take those actions reserved in FAR subpart 9.5 for the head of the contracting activity. However, see 1809.503 regarding waivers.

1809.503 Waiver.

The Administrator has designated the Assistant Administrator for Procurement as the approval authority for waivers under FAR 9.503. The procurement officer shall forward requests for waivers under FAR 9.503 to the Assistant Administrator for Procurement (Code HS) for action.

1809.507 Procedures.

(a) The draft solicitation provision and proposed contract clause required by FAR 9.507(a) shall be approved by the procurement officer when the installation has final authority for source selection and by the Assistant Administrator for Procurement (Code HS) when NASA Headquarters has that authority.

(b) The Assistant Administrator for Procurement (Code HS) shall make any final decision required by FAR 9.507(c)(4).

1809.508 Solicitation provision and contract clause.

1809.508-2 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 1852.209-71, Limitation of Future Contracting, in solicitations and contracts, in compliance with FAR 9.508.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

The contracting officer shall insert the clause at 1852.209-72, Composition of the Contractor, in all construction invitations for bids and resulting contracts. The clause may be used in other solicitations and contracts to clarify a contractor team arrangement where the prime contractor consists of more than one legal entity, such as a joint venture.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
1810.001 Definitions.
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1810.011 Solicitation provisions and contract clauses.
1810.011-70 NASA solicitation provisions and contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28232, July 5, 1989, unless otherwise noted.

1810.001 Definitions.

Brand-name product means a commercial product described by brand name and make or model number or other appropriate nomenclature by which it is offered for sale to the public by the particular manufacturer, producer, or distributor.

1810.002 Policy.

1810.002-70 NASA policy.

Whenever a specification is deemed inadequate, the contracting officer shall initiate immediate action to recommend that the activity responsible for the specification amend or revise it in order to obviate the necessity for repeated departures from the specification.

1810.004 Selecting specifications or descriptions for use.

(a) As required by FAR 10.004(e), contracts will include appropriate preservation, packaging, packing, and marking requirements. The services of packaging technicians shall be used to—

(1) Develop preservation, packaging, packing, and marking requirements for individual procurements; and

(2) Assist in evaluating the reasonableness of contractors' packaging, packing, and marking cost estimates or charges.

(b) Unrealistic preservation, packaging, packing, and marking requirements should be reported and changes recommended to the activity originating the requirement and to the contracting officer.

1810.004-70 Additional requirements.

(a) Drawings and data furnished with solicitations shall be clear and legible (see also FAR 10.008).

(b) Many specifications cover several grades or types and provide for several options in methods of inspection. When such specifications are used, the solicitation shall state specifically the grade, type, or method of inspection on which offers are to be based.

1810.004-71 Brand-name-or-equal purchase description.

(a) Purchase descriptions containing references to one or more brand-name products followed by the words "or equal" may be used only when authorized by FAR 10.004(b)(3) and in accordance with this part 1810 (see 1810.008-70, 1810.011, and 1852.210-70).

(b) The words "or equal" should not be added if it is determined under paragraph (a) of this section that only a particular product meets the essential requirements of the Government (e.g., when the required supplies can be obtained only from one source (see FAR 6.302-1)).

(c) To the extent feasible, all known acceptable brand-name products should be referenced. If a "brand-name-or-equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if those products will meet the needs of the Government in essentially the same manner as those referenced.

(d) "Brand-name-or-equal" purchase descriptions should set forth the salient physical, functional, or other characteristics of the referenced products essential to the needs of the Government. For example, when interchangeability of parts is required, that requirement should be specified. Purchase descriptions should contain the following characteristics, in addition to those at FAR 10.004(b)(1), to the extent available, and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required.

(2) Applicable model, make, or catalog number for each brand-name product referenced, and identity of the commercial catalog in which it appears.

(3) Name of manufacturer, producer, or distributor of each brand-name product referenced (and address if company is not well known).

(e) When it is needed to describe adequately the item required, a commercial catalog description, or pertinent extracts, may be used if the description is identified in the solicitation as being that of the particular named manufacturer, producer, or distributor. The contracting officer shall ensure that a copy of any catalog referenced (except parts catalogs) is available on request for review by offerors at the contracting office.

(f) When a solicitation contains a "brand-name-or-equal" purchase description, offerors offering brand-name products referenced in that description shall not be required to furnish samples of the referenced brand-name products; however, solicitations may require the submission of samples in the case of offerors proposing "or equal" products.

(g) Proposals offering products differing from brand-name products referenced in a "brand-name-or-equal" purchase description shall be considered for award if the contracting officer determines under the provision at 1852.210-70 that the offered products meet the salient characteristics required by the solicitation. Offers shall not be rejected simply because of minor differences in design, construction, or features that do not affect the suitability of the products for their intended use.

(h) Except as provided in paragraph (i)(1) of this section, when a "brand-name-or-equal" purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation for completion by the offeror:

Offering:
Manufacturer's Name________________
Brand____________ No.__________

(i) (1) Where components of an end item are described in the solicitation by a "brand-name-or-equal" purchase description and the contracting officer determines that applying of the provision at 1852.210-70 to them would be impracticable, the requirements of paragraph (h) of this section shall not apply with respect to them. In such cases, if the provision is included in the solicitation for other reasons, a statement substantially as follows also shall be included:

The provision entitled Brand Name or Equal does not apply to the following components:

(List the components to which the provision does not apply.)

(2) In the alternative, if the contracting officer determines that the provision at 1852.210-70 should apply only to certain components, the requirements of paragraph (h) of this section shall apply to them, and a statement substantially as follows shall be included:

The provision entitled Brand Name or Equal applies to the following components:

(List the components to which the provision applies.)

(j) The policies and procedures prescribed in paragraphs (a) through (i) of this section apply to both sealed-bid and negotiated procurements. If use of the provision is not practicable (as may be the case, for example, in exigency purchases), suppliers shall be informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that they are equal in all significant and material respects to the products referenced.

1810.007 Deviations.

If an exception or deviation from a Federal or military specification is required—

(a) The contracting officer shall, before issuing the solicitation, submit a fully documented and justified request for the deviation to the procurement officer; and

(b) The procurement officer shall comply with FAR 10.007(a).

1810.008 Identification and availability of specifications.

Each solicitation shall be accompanied by the applicable specifications, standards, plans, drawings, and other pertinent documents, or shall state where they can be obtained or examined.

1810.008-70 Brand-name-or-equal awards.

Award documents shall identify or incorporate by reference an identification of the specific products the contractor is to furnish. This identification shall include any brand name and make or model number, descriptive material, and any modifications of brand-name products specified in the solicitation. Included in this requirement are those instances in which:

(a) The description of the end item contains "brand-name-or-equal" purchase descriptions of components or of accessories related to the end item and

(b) The solicitation includes the provision at 1852.210-70 as applicable to such components or accessories (see 1810.004-70(i)).

1810.011 Solicitation provisions and contract clauses.

1810.011-70 NASA solicitation provisions and contract clauses.

(a) When a "brand-name-or-equal" purchase description is used, the contracting officer shall insert in the solicitation the provision at 1852.210-70, Brand Name or Equal.

(b) The contracting officer shall insert the provision at 1852.210-71, Descriptive Literature for Used Material, in solicitations containing FAR provision 52.210-6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property. Insert the information needed to make a determination that the items to be furnished can reasonably be expected to conform to the requirements of the solicitation.

(c) The contracting officer may insert a clause substantially as stated in 1852.210-72, Supplies and/or Services to be Furnished, in all solicitations and contracts to indicate the items to be delivered. Insert the item number, description of the supplies (see FAR 2.101 for definition) and/or services to be furnished, quantities to be furnished, unit and unit price (if applicable), and total dollar amount. The column headings may be modified for what is being acquired and for the type of contract.

(d) The contracting officer shall insert a clause substantially as stated at 1852.210-75, Packaging and Marking, in solicitations and contracts where the packaging and marking requirements of NASA Handbook 6000.1 and/or MIL-STD-2073 are appropriate. Insert the applicable information for the particular procurement. Substitute Alternate I for paragraphs (a), (b), (c), and (d) of the basic clause if commercial packing and marking practices are to be used. Add Alternate II if space flight item(s) are to be delivered.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1812.1—Delivery or Performance Schedules

Sec.
1812.104 Contract clauses.
1812.104-70 Additional clauses.

Subpart 1812.2—Liquidated Damages

1812.202 Policy.

Subpart 1812.3—Priorities and Allocations

1812.302 General.
1812.303 Procedures.
1812.303-70 NASA procedures.

Subpart 1812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1812.505 Contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28234, July 5, 1989, unless otherwise noted.

Subpart 1812.1—Delivery or Performance Schedules

1812.104 Contract clauses.

1812.104-70 Additional clauses.

(a) The contracting officer may use the clause at 1852.212-70, Notice of Delay, if it is desirable to provide for contractor notice of anticipated delays in performance.

(b) See 1827.406(b) regarding reports of work.

(c) The contracting officer shall insert the clause at 1852.212-72, Partial Shipments, in solicitations and contracts when a quantity specified for a line item to be delivered is more than one unit, or when the Schedule contains more than one line item to be delivered, and partial shipments by the contractor will not adequately meet the Government's overall needs.

(d) The contracting officer may insert a clause substantially as stated at 1852.212-73, Delivery Schedule, in solicitations and contracts if the Government requires delivery of items on specific dates during the contract. Insert the item description, quantity of items to be furnished, delivery dates, and shipping addresses applicable to the particular procurement.

(e) The contracting officer may insert a clause substantially as stated at 1852.212-74, Period of Performance, in term contracts to specify the time during which contract performance will take place. Insert the period of performance dates applicable to the particular procurement.

Subpart 1812.2—Liquidated Damages

1812.202 Policy.

The contracting officer shall forward recommendations concerning remission of liquidated damages via the head of the contracting activity to the Assistant Administrator for Procurement for submission to the Administrator.

Subpart 1812.3—Priorities and Allocations

1812.302 General.

(a) The Department of Defense is the "Delegate Agency" for NASA. The Headquarters Procurement Policy Division, Code HP, shall coordinate with DOD, as necessary, to ensure that any DOD-imposed requirements are met.

(b) Additional regulatory guidance is available in "DPAS, Defense Priorities and Allocations System," Department of Commerce, International Trade Administration, Office of Industrial Resource Administration, Washington, DC 20250, October 1984, 66 pages. (Copies available from Department of Commerce.) This DOC booklet contains the pertinent parts of 15 CFR part 350 and is the recommended guidance on the DPAS to contractors and suppliers receiving rated orders.

1812.303 Procedures.

1812.303-70 NASA procedures.

(a) The use of priority ratings on NASA contracts and purchase orders is mandatory except as noted in paragraph (d) of this section. Priority ratings are assigned on individual contracts and purchase orders by the contracting officer.

(b) Except where no rating is issued as provided in paragraph (d) of this section, all NASA orders shall be assigned a DO rating, unless NASA has obtained a DX rating from the Delegate Agency. Currently, NASA has no programs with a DX rating.

(c) The program identification numbers (DPAS, 15 CFR part 350, SCH L.) to be used by NASA are as follows:

A1 Aircraft
A2 Missiles
A3 Ships
A5 Weapons
A6 Ammunition
A7 Electronic and Communications Equipment
B1 Military Building Supplies
B8 Production Equipment (For Contractor's Account)
B9 Production Equipment (Government-Owned)
C2 Construction
C3 Maintenance, Repair, and Operating Supplies for Facilities
C9 Miscellaneous/Other

(d) Priority ratings will not be issued for the following:

(1) Items ordered or requisitioned from the GSA Federal Supply Service.

(2) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order, or unless NASA has obtained specific priority rating authority.

(3) Production or construction equipment or items to be used for the manufacture of production equipment, unless NASA has obtained specific priority rating authority.

(4) Items falling under the jurisdiction of agencies other than NASA's Delegate Agency. These are: petroleum, gas, solid fuel, electric power, and all other forms of energy; food; civil transportation and the movement of persons and property by all modes; minerals; water; housing facilities; health facilities; radioisotopes, stable isotopes, source material and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy; communication services; copper raw materials; crushed stone; gravel; sand; scrap; slag; central steam heat; and waste paper.

(e) The Headquarters Procurement Policy Division (Code HP) is responsible for coordinating DPAS matters with the Delegate Agency and the Department of Commerce, as necessary. Installation requests arising under FAR 12.303(g) regarding assignment of ratings, special priorities assistance, controlled materials, or related DPAS topics shall be directed to Code HP.

Subpart 1812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1812.505 Contract clauses.

The Stop-Work Order clause at FAR 52.212-13 is not authorized for use in research contracts with educational or other nonprofit institutions.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1813.1—General

Sec.

1813.104 Procedures.

Subpart 1813.2—Blanket Purchase Agreements

1813.203 Establishment of blanket purchase agreements.
1813.203-1 General.
1813.204 Purchases under blanket purchase agreements.
1813.205 Review procedures.

Subpart 1813.3—Fast Payment Procedure

1813.302 Conditions for use.
1813.303 Preparation and execution of orders.

Subpart 1813.4—Imprest Fund

1813.403 Agency responsibilities.
1813.403-70 Establishment of imprest funds.
1813.404 Conditions for use.
1813.405 Procedures.

Subpart 1813.5—Purchase Orders

1813.502 Unpriced purchase orders.
1813.505 Purchase order and related forms.
1813.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
1813.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

Subpart 1813.70—Procurement Request Overlay Method

1813.7001 General.
1813.7002 Limitations on use.
1813.7003 Procedures.

Subpart 1813.71—Credit Cards

1813.7101 Scope of subpart.
1813.7102 Applicability.
1813.7103 Limitations.
1813.7104 Cardholders.
1813.7105 Approving officials.
1813.7106 COTR.
1813.7107 Administrative office contact.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28235, July 5, 1989, unless otherwise noted.

Subpart 1813.1—General

1813.104 Procedures.

(a) Small purchase procedures are exempt from the requirements of the Competition in Contracting Act of 1984 (see FAR 6.001).

(b) When bulk funding is deemed appropriate, see Financial Management Manual 9030-5e and 9040-4b.

(c) For sole-source procurements over $1,000 involving (1) an individual employed by NASA during the past 2 years or (2) a firm in which such an individual is a partner, principal officer, or majority shareholder, or that is otherwise controlled or predominantly staffed by such individuals (see subpart 1803.70), the notation required by FAR 13.106(c)(2) shall be submitted for approval at a level above the contracting officer.

Subpart 1813.2—Blanket Purchase Agreements

1813.203 Establishment of blanket purchase agreements.

1813.203-1 General.

Blanket purchase agreements (BPA's) may be prepared and issued on any installation-prescribed purchase order form.

1813.204 Purchases under blanket purchase agreements.

Non-GS/GM-1102 or 1105 personnel shall not be authorized to place orders under a BPA in amounts greater than $1,000 for an individual order. A contracting officer warrant is not required to place an order under a BPA; however, individuals authorized to order must be specified in writing, by the contracting officer. Authority to place orders should be revoked immediately upon evidence of abuse.

1813.205 Review procedures.

The procurement officer shall ensure that all BPA files are reviewed at least annually to ascertain that appropriate procedures are being folowed and that prices obtained are fair nd reasonable.

Subpart 1813.3—Fast Payment Procedure

813.302 Conditions for use.

Pursuant to FAR 13.302, the dollar mitation for NASA is hereby established as the small purchase ceiling for efense agencies.

813.303 Preparation and execution of orders.

Orders incorporating the fast pay- ent procedure may be issued on Op- ional Form 347, Order for Supplies or ervices, or on any other installation- rescribed purchase order form.

Subpart 1813.4—Imprest Fund

813.403 Agency responsibilities.

813.403-70 Establishment of imprest funds.

(a) *Authority.* Upon approval of the Chief, Disbursing Office of the Treas- ry Department, the Director of Fi- ancial Management, NASA Head- uarters, may authorize the establish- ent of imprest funds and any re- uired subsequent increases to them. The number of imprest funds at an in- tallation should generally be restrict- d to the minimum number necessary o ensure efficiency in small purchase ransactions. Financial Management Manual 9650, Imprest Fund Proce- ures, should be used in conjunction ith this subpart.

(b) *Amount of imprest funds.* The mount of each fund shall be estab- ished on the basis of the estimated onthly payments to be made from it nd the need for replenishment with- ut undue administrative burden. Fi- ancial management officers of each ASA installation will designate one r more employee(s) in their office to ake unannounced cash verifications f imprest fund balances at least quar- erly. Each cash verification will be ocumented, and working papers re- ained for review by the Office of the nspector General and personnel of he Financial Management Division, ASA Headquarters. In conjunction ith the cash verification, the level of funds held in an imprest fund shall be evaluated on a semiannual basis (see FAR 13.403). The disclosure of any unauthorized use of or irregular accounting for an imprest fund during the quarterly cash verification, or the annual audit or at any other time, will be reported to the Director, Financial Management Division, NASA Headquarters.

(c) *Imprest fund cashiers.* (1) Imprest fund cashiers shall be appointed in accordance with Financial Management Manual 9650 and are authorized to make cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. Financial management or fiscal officers and others having access to accounting records or responsibility for originating, approving, processing, or receiving requirements are not eligible for appointment as imprest fund cashiers. In no event shall an imprest fund cashier have access to or control of more than one imprest fund.

(2) An alternate imprest fund cashier may be appointed (i) if the volume of work requires an alternate to the principal cashier or (ii) to provide service during the principal cashier's absence. Appointment requirements for principal cashiers shall apply to alternate cashiers. In planned short-term absences of the principal cashier, cash may be advanced by the principal to the alternate in an amount not to exceed the alternate's limit of the fund. Upon resuming duties, the principal cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers, and residual cash. In the absence of the principal cashier for more than 15 working days or for a period of time that will require submission of a reimbursable voucher before the principal's return, transfer of funds from the principal to the alternate cashier shall be accomplished as prescribed by Financial Management Manual 9650.

1813.404 Conditions for use.

(a) Imprest Funds may be used to make local cash payments of $300 or less for transactions involving—

(1) Small purchases and nonpersonal services which are readily available for delivery and do not require technical specifications or technical inspection and where direct cash payment will be advantageous to the government;

(2) Travel advances and vouchered reimbursements for travel expenses (not to exceed $500 for any one transaction);

(4) Postage stamps, parcel post, c.o.d. postal charges, and local drayage;

(5) Reimbursement for the cost of official local transportation and telephone or telegraphic services; or

(6) Prepaid transportation charges indicating f.o.b. shipping point which do not exceed $100.

(b) Imprest funds shall not be used for—

(1) Articles or services, particularly repetitive items, which are available from store stock inventories;

(2) Purchases of articles or services in quantities or amounts covered by mandatory sources of supply;

(3) Articles or services which are restricted by statutory or regulatory laws, i.e., newspapers and similar items;

(4) Paying salaries or wages;

(5) Advances, other than those authorized in 1813.405(b);

(6) Cashing checks or other negotiable instruments;

(7) For money orders or personal services unless authorized by the Director, Financial Management Division, NASA Headquarters; or

(8) Paying for international shipments or household goods shipments.

1813.405 Procedures.

(a) *Receipt of material.* (1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described in the procurement request and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the sales document "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. In the absence of a supplier's sales document, a receipted Standard Form 1165, Receipt for Cash—Subvoucher, shall be used to record the receipt of purchases made from the imprest fund and shall be processed in the same manner.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advance arrangements may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certifications of receipt and acceptance of material shall be obtained on one of the documents as indicated in paragraph (a)(1) of this section. Receipt for cash payment (see paragraph (c) of this section) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangements for picking up material are not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(b) *Advance of funds.* Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165. After purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall void the interim receipt for cash. Cash advanced should generally be accounted for daily, but may be advanced for a period not to exceed five consecutive work days.

(c) *Certification of cash payment.* (1) The original receipt document (or a copy tendered as the original) presented to the imprest fund cashier for payment shall be stamped with a certification containing—

(i) A statement that cash payment was received in full;

(ii) The amount paid;

(iii) The date of payment; and

(iv) The signature and title of the supplier or agent receiving the payment.

(2) Alterations or corrections to documents tendered for payment shall be initialled by the person making the change. Changes in the amount paid

shall be initialled by the individual receiving payment.

(d) *Responsibilities of imprest fund cashier.* Pending receipt of material, the imprest fund cashier shall keep a file of procurement requests covering imprest fund purchases. Before payment or acceptance of the document tendered for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for a purchase of $15.00 or less, the person making the purchase shall complete and sign the cash receipt document indicating receipt of funds from the imprest fund.

(e) *Payments*—(1) *C.o.d.* Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or other authorized individual shall pay the supplier or agent and obtain the certification of cash payment as required by paragraph (c) of this section.

(2) *Receipt from common carrier or post office.* When c.o.d. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office or common carrier. Such receipt shall be supported by copies of the applicable sales document, if available.

(3) *Periodic payments.* When use of a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis, provided that the accumulated amount of the deliveries for the specified period does not exceed the dollar limitation imposed on the imprest fund method by 1813.404.

(4) *Failure to ship c.o.d.* When material is ordered c.o.d., but is shipped by the supplier subject to payment by check, Standard Form 1034, Public Voucher for Purchases and Services Other than Personal, may be used to make payment. Under these circumstances, the receiver shall prepare the necessary certification of receipt and shall forward the receipted document through the imprest fund cashier for:

(i) Attachment of the supporting documents authorizing the shipment and

(ii) Submission to the disbursing officer for payment.

(f) *Reimbursement of imprest funds.* (1) The imprest fund shall be reimbursed in accordance with Financial Management Manual 9650.

(2) When a supplier refunds cash before submission of the Standard Form 1129, Reimbursement Voucher, covering the payment, the imprest fund cashier shall accept the refund, return it to the imprest fund, and enter the amount on the original of the supplier's receipt. When refund is made after submission of the applicable Standard Form 1129, the imprest fund cashier shall enter the amount on the retained copy of the reimbursement voucher and promptly:

(i) Submit the refund directly to the disbursing officer or

(ii) Deposit it directly on Standard Form 209, Certificate of Deposit.

(g) *Accounting.* Recordkeeping shall be based on simplified memorandum records to permit frequent reconciliation of funds and should show:

(1) The amount of cash received,

(2) The amount paid out, and

(3) The balance on hand at the close of each day.

It is permissible to group numerous small payments by numbering payment documents and affixing to them an adding-machine tape showing the total applying to each grouping of payment documents.

(h) *Audits.* The Financial Management Officer of each NASA installation having an Imprest Fund will perform an annual audit of the advances and disbursements made from the fund. Documentation covering the annual audit is retained for review by the Office of Inspector General and personnel of the Financial Management Division, NASA Headquarters. The Office of Inspector General, NASA Headquarters, will conduct an audit of each Imprest Fund not less than once every 3 years. More frequent audits may be made where, on the basis of past findings, the audits have disclosed procedural deficiencies.

Subpart 1813.5—Purchase Orders

1813.502 Unpriced purchase orders.

(a) NASA contracting officers shall ensure that suppliers receiving unpriced purchase orders are carefully selected.

(b) Orders shall not contain an estimated target unit price.

(c) Suitable local records and controls of outstanding unpriced purchase orders shall be maintained to ensure regular follow-up with suppliers until the order is priced. These records should include any information available to support the fairness and reasonableness of the proposed monetary limitation.

1813.505 Purchase order and related forms.

1813.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Optional Forms 347 and 348 or Installation-prescribed forms may be used.

1813.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

The $2,500 ceiling for use of the Standard Form 44 at FAR 13.505-3 is raised to $10,000 for purchases of aviation fuel and oil only.

Subpart 1813.70—Procurement Request Overlay Method

1813.7001 General.

This method is an acceptable adjunct to other simplified purchase procedures and may be used in placing oral orders when use of a BPA is too cumbersome or no BPA exists. Each transaction is recorded on a small form that attaches to, becomes a part of, and overlays a portion of the procurement request. Suppliers' delivery tickets are used as additional supporting documentation. Use of this method eliminates the administrative requirements for preparing and mailing individual purchase orders. This method may be used when suppliers:

(a) Are willing to accept oral orders and

(b) Can be reasonably relied upon to fill them in accordance with the terms of the oral transaction.

1813.7002 Limitations on use.

This method shall not be used if—

(a) The requirements of more than one procurement request are to be combined in a transaction;

(b) More than one delivery will be required (unless the requirements of a single procurement request are to be divided among several suppliers and only one delivery per supplier is required);

(c) An installation-prescribed form or Optional Form 347 has been utilized;

(d) It is necessary or desirable to incorporate specifications or other terms and conditions in a written purchase order;

(e) GSA Federal Supply Schedules are to be used;

(f) Purchases are to be made from or through other Government agencies; or

(g) The amount of the purchase is over $2,500 (unless the purchase is made under a BPA).

1813.7003 Procedures.

(a) After competitive selection of the source (see FAR 13.106), the order may be placed by telephone. Particular care shall be taken to ensure that the supplier agrees to accept the order without written confirmation and that the order number, item descriptions, quantities, prices, and other terms and conditions are clearly understood. If the amount of the purchase does not exceed $300, the supplier should be encouraged to deliver c.o.d. (see FAR 13.404).

(b) The supplier shall be given all pertinent and specific instructions at the time of placing the order, including the installation's methods of handling charge purchases to be billed within a period of one month or less.

(c) Upon placing the order, the contracting officer shall (1) ensure that a preprinted overlay form is affixed to the procurement request and, if necessary, after the overlay is filled in (2) adjust the estimated unit and total cost figures of the procurement request to reflect the actual purchase price. This shall be done by lining through the original procurement request figures so that they remain legible. Any other changes in the original information of the procurement request to make it conform to the facts of the purchase shall be made in like manner. The preprinted overlay form shall contain at least the following information:

Order No.
Supplier (Name)
(Address, City)
(State, Zip)
Discount Terms
Delivery Date
Buyer
--
F.o.b. Destination
Procurement
Placement
Code
Action: procurement request line items ( ), ( ), (etc.) complete*
Total procurement request action: partial,* complete*
Payment: cash,* charge*
--
(Contracting Officer Signature)
Date Signed
(*Circle as appropriate)

(d) The contracting officer shall sign and date the completed overlay form on the procurement request.

(e) The procurement request with overlay shall be reproduced and distributed internally in accordance with the installation's local instructions to provide copies to the offices or activities responsible for receiving and accepting the merchandise, making cash payment, or processing charge purchases.

(f) In accordance with local instructions, copies of the supplier's delivery ticket received with the merchandise shall be distributed to establish receipt and acceptance of merchandise and serve as a basis for cash payment or obligation of funds and subsequent payment of charge purchases.

Subpart 1813.71—Credit Cards

SOURCE: 54 FR 53630, Dec. 29, 1989, unless otherwise noted.

1813.7101 Scope of subpart.

This subpart authorizes the use of the U.S. Government Credit Card. (See 1870.4 for NASA procedures under the NASA Credit Card System.)

1813.7102 Applicability.

This subpart applies to installations that have elected to participate in the credit card program by issuing a delivery order under the contract for Governmentwide Commercial Credit Card Service awarded by the General Services Administration, Federal Supply Service.

1813.7103 Limitations.

To use the GSA schedule contract, an installation must take the following actions before issuing a delivery order:

(a) Designate cardholders, approving officials, a Contracting Officer's Technical Representative (COTR), an Administrative Office Contact, and a Financial Management Office Contact.

(b) Establish procedures for covering the contractor's administrative fee.

1813.7104 Cardholders.

(a) *Designation.* The Procurement Officer shall determine the number of cardholders to be authorized at the installation and shall designate individual cardholders based on installation nomination procedures. The Procurement Officer shall issue a delegation of authority to each cardholder specifying the authority being delegated and any limitation on the authority.

(b) *Single purchase limits.* The authority delegated to a cardholder shall not exceed the small purchase limit in FAR 13.000. This authority is the limit for a single purchase, which may include multiple items as part of the same transaction.

(c) *Limitation on designations.* Cardholders with authority for purchases above the imprest fund limit in 1813.404(a) shall be warranted contracting officers appointed under subpart 1801.6.

(d) *Training.* Cardholders with purchase authority above the imprest fund limit shall have completed formal training required by 1801.603-2(e)(1)(iii)(A). The Procurement Officer shall assign a contracting officer or other procurement person to provide eight hours of on-the-job orientation and training for other cardholders.

(e) *Review.* The Procurement Officer shall establish a system for periodic review of the credit card transaction process, including a review of a sample of purchases, to ensure that proper purchasing procedures are being followed and that internal controls to avoid fraud, waste, and abuse are effective.

1813.7105 Approving officials.

Unless installation procedures otherwise provide for their designation, the Procurement Officer shall designate approving officials. The approving official should be the cardholder's supervisor or a higher level individual. A cardholder may not be an approving official for purchases made by the cardholder or the cardholder's supervisor.

1813.7106 COTR.

The Procurement Officer shall appoint a COTR and notify GSA of the appointment.

1813.7107 Administrative office contact.

The Procurement Officer shall appoint an installation Administrative Office Contact (who may be the COTR).

PART 1814—SEALED BIDDING

Subpart 1814.2—Solicitation of Bids

Sec.
1814.201 Preparation of invitations for bids.
1814.201-2 Part I—The Schedule.
1814.201-5 Part IV—Representations and instructions.
1814.201-6 Solicitation provisions.
1814.201-670 NASA solicitation provisions.
1814.202 General rules for solicitation of bids.
1814.202-7 Facsimile bids.

Subpart 1814.3—Submission of Bids

1814.302 Bid submission.

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404 Rejection of bids.
Sec.
1814.404-1 Cancellation of invitations after opening.
1814.404-170 Delegation of authority.
1814.406 Mistakes in bids.
1814.406-3 Other mistakes disclosed before award.
1814.406-4 Mistakes after award.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 23238, July 5, 1989, unless otherwise noted.

Subpart 1814.2—Solicitation of Bids

1814.201 Preparation of invitations for bids.

1814.201-2 Part I—The schedule.

The contracting officer shall include in this section of the Schedule the data specified—

(a) In FAR 14.201-2;

(b) Elsewhere in the FAR; and

(c) Elsewhere in this regulation.

[54 FR 37371, Sept. 26, 1989]

1814.201-5 Part IV—Representations and instructions.

Section M—Evaluation factors for award.

(a) If award is to be made in the aggregate (all-or-none basis), the contracting officer shall so state.

(b) If award is to be made by specified groups of items, the contracting officer shall so state.

(c) If bidders are required to have special technical qualifications because of the complexity of the equipment being purchased or for some other reason, the contracting officer shall state those qualifications.

1814.201-6 Solicitation provisions.

1814.201-670 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.214-70, Caution to Offerors Furnishing Descriptive Literature, in invitations for bids. See FAR 52.214-21, Descriptive Literature.

(b) The contracting officer shall insert the provision at 1852.214-71, Grouping for Aggregate Award, in invitations for bid, except for construction, and in competitive requests for proposals when conditions of inspection, installation, performance, or location are impracticable under multiple awards for certain items or groupings of certain items. See 1814.201-5 (a) and (b) and FAR 52.214-10 and 52.215-16. Insert the item numbers and/or descriptions applicable for the particular procurement.

(c) The contracting officer shall insert the provision at 1852.214-72, Full Quantities, in invitations for bid, except for construction, and competitive requests for proposals when it is in the Government's best interest not to make award for less than the full quantities solicited. See FAR 52.214-10 and 52.215-16.

(d) For conducting pre-bid conferences, see 1815.407-70(f).

1814.202 General rules for solicitation of bids.

1814.202-7 Facsimile bids.

Before issuance of the solicitation, NASA procurement officers may, by written determination and without power of redelegation, authorize the use of facsimile bids for individual procurements.

[54 FR 53630, Dec. 29, 1989]

Subpart 1814.3—Submission of Bids

1814.302 Bid submission.

In accordance with FAR 14.302(b), NASA has elected not to consider telegraphic bids communicated by telephone. When telegraphic bids are authorized, the telegram must be delivered in writing.

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404 Rejection of bids.

1814.404-1 Cancellation of invitations after opening.

1814.404-170 Delegation of authority.

(a) The authority to make the determination at FAR 14.404-1(c) to cancel the invitation and reject all bids is delegated to the contracting officer, except as provided in paragraph (b)(2) of this section.

(b) A determination under FAR 14.404-1(c) (6) or (7) that includes an authorization to complete the acquisition through negotiation (see FAR 14.404-1(e)(1)) shall be approved by—

(1) The contracting officer, if the solicitation is to be cancelled because no responsive bid has been received from a responsible bidder; or

(2) The procurement officer, if the solicitation is to be cancelled because:

(i) All otherwise acceptable bids received are at unreasonable prices,

(ii) Only one bid is received and the contracting officer cannot determine the reasonableness of the bid price, or

(iii) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

The procurement officer shall obtain the advice of the Chief Counsel before making this determination.

1814.406 Mistakes in bids.

1814.406-3 Other mistakes disclosed before award.

(a) Under the authority delegated by the Administrator in NMI 5101.8, Delegation of Authority To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement), the Assistant Administrator for Procurement is authorized to permit the correction of bids under FAR 14.406-3 (a) and (b) and the award of a contract under 14.406-3(d) (see FAR 14.406-3(e)). The Assistant Administrator for Procurement has authorized procurement officers to permit withdrawal of bids when the conditions in FAR 14.406-3(c) are met. When the procurement officer permits withdrawal of a bid, a copy of the determination shall be forwarded to the Office of Procurement, Code HP, within ten days after the determination is made.

(b) When a contractor requests correction of a bid under FAR 14.406-3(a) and it is determined that a mistake has been made but correction is denied and, as an alternative, the contractor requests award under its bid as submitted, the contracting officer shall refer the file to the Assistant Administrator for Procurement for determination.

(c) Any doubtful case under FAR 14.406-3 should be forwarded to the

Assistant Administrator for Procurement.

1814.406-4 Mistakes after award.

(a) Any determination authorized by FAR 14.406-4 (b) and (c) shall be made by the contracting officer after obtaining concurrence from the installation's Office of Chief Counsel in accordance with FAR 14.406-4(d).

(b) A copy of any determination made under FAR 14.406-4(b) and

(c) Shall be forwarded to the Office of Procurement, Code HP.

PART 1815—CONTRACTING BY NEGOTIATION

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UTHORITY: 42 U.S.C. 2473(c)(1).

ource: 54 FR 28239, July 5, 1989, unless herwise noted.

Subpart 1815.1—General equirements for Negotiation

15.102 General.

Procurement personnel, as well as hers concerned, shall ensure that ntract negotiations are completed peditiously. All details of the negotiion must be completed before the ntract is awarded, including, to the tent applicable—

(a) Arrangements regarding Governent-furnished property, including e contractor's responsibility for conolling, maintaining, and accounting r it;

(b) Determination that the prospece contractor is responsible, includ completion of preaward surveys hen required;

(c) Arrangements with other Govmment agencies for using facilities der their control;

(d) Verification that any required serity clearance has been obtained; d

(e) Establishment of the requireent for the contractor to furnish ta, both for technical evaluation d for competitive reprocurement hen follow-on procurement is proba-, if the appropriate technical office s requested such data.

15.170 Factors in negotiation.

During negotiations, contracting offers and their negotiators shall give e attention to the following factors ed in paragraphs (a) through (h) of this section and any other appropriate factors:

(a) Comparison of—(1) The business reputations, capabilities, and responsibilities of the offerors;

(2) Prices quoted by each with other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multishift, and overtime costs, and any other factors relating to price, such as profits, transportation costs, and cash discounts.

(b) Consideration of—(1) The quality of the supplies or services offered or the quantity of the same or similar supplies or services previously furnished, with particular regard to the satisfaction of technical requirements;

(2) Delivery requirements;

(3) Cost sharing, if required (see 1816.303);

(4) The size of the business concern;

(5) Whether the offeror requires expansion or conversion of plant facilities;

(6) Whether the offeror is in a labor surplus area;

(7) Whether the offeror will have an adequate supply of qualified labor;

(8) The extent of subcontracting;

(9) The offeror's existing and potential workload;

(10) The possibility of broadening the industrial base by developing additional suppliers;

(11) Whether the offeror requires Government-furnished property, machine tools, or facilities, or Government-operated test facilities; and

(12) The rules for avoiding of organizational conflicts of interest (see FAR subpart 9.5).

(c) Discriminating use of price and cost analyses.

(d) Investigation of price aspects of any important subcontract.

(e) Individual bargaining, by mail or by conference.

(f) Effective utilization of the most desirable type of contract.

(g) Advantages or disadvantages to the Government that might result from making multiple awards (see FAR 15.605(f)).

(h) Royalties the Government will be required to pay under patent license agreements.

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

1815.402 General.

Before issuance of the solicitation, NASA procurement officers may, by written determination and without power of redelegation, authorize the use of facsimile proposals for individual procurements.

[54 FR 53631, Dec. 29, 1989]

1815.405 Solicitations for information or planning purposes.

1815.405-1 General.

(a) Solicitations for information or planning purposes are particularly useful when a procurement can be properly negotiated only after potential offerors have had an opportunity to become familiar with a large quantity of data, or when it would be desirable to have industry participation in formulating and reviewing complex specifications or requirements. Solicitations for information or planning purposes can have desirable benefits. They can promote competition and help ensure the reasonableness and feasibility of the requirement. Potential sources can be apprised of NASA requirements in a particular field and invited to submit data for consideration early in the acquisition process without undue expenditure of time, effort, and money.

(b) Solicitations for information or planning purposes may not be used as a means for prequalifying offerors. While, under some circumstances, their use may lengthen the acquisition cycle, it may shorten the time required for submitting proposals when a large quantity of data must be analyzed by industry before proposals can be submitted.

1815.405-70 Application.

(a) Solicitations for information or planning purposes should be utilized when appropriate; e.g., in major systems acquisitions or other complex projects for which feasibility or technology studies are being conducted (either in-house or by contract) that may have relevance to later competitions. The results of such studies may be made available to industry as soon as they are known or periodically.

(b) Requirements for automatic data processing equipment or support services to perform specified operations or achieve certain results may be suitable for advance review and comment by the private sector when diverse approaches to accomplishing mission objectives may be feasible. The material made available in advance may vary from a comprehensive draft of a proposed requirement to a partial draft; e.g., statement of work and/or specifications or reports.

1815.405-71 Procedure.

(a) In making advance information available to industry, sufficient time should be allowed to permit potential sources an opportunity, commensurate with the task, to prepare and submit a response to the solicitation for information or planning purposes. Invitations for bids and requests for proposals may not be used for these purposes. Solicitations for information or planning purposes may be issued only with the procurement officer's prior approval (see FAR 15.405-1).

(b) The provision at FAR 52.215-3 does not prohibit the allowance, under FAR 31.205-18, of the cost of preparing a response to the solicitation. Solicitations for information or planning purposes shall at least:

(1) Request an expression of interest in the contemplated requirement and

(2) Designate a time and place for submitting responses.

Each solicitation shall define, as explicitly as possible, the information the Government desires and indicate whether it is contemplated that the solicitation will be followed by a conference. After approval by the procurement officer, the solicitation shall be forwarded to potential sources and synopsized according to in FAR subpart 5.2.

(c) Each source responding to the solicitation shall be advised of the details of any pending conference. The conference, when provided for, shall be conducted by procurement personnel and should be attended by technical, legal, and other personnel as appropriate. Care must be taken not to prejudice any future competition. All sources shall be furnished identical information in connection with the proposed requirement. Care shall be taken to safeguard any information received in confidence.

1815.405-72 Special considerations.

The procedure in 1815.405-71 does not constitute procurement in the usual sense, where the Government is fully aware of its requirements and has incorporated them in a formal solicitation or firms are invited to make known their interest in a procurement by responding to a presolicitation notice. Under the solicitation for information or planning purposes procedure, interested firms may suggest changes in a proposed specification or statement of work; propose alternatives in concept, method, design, system integration, and the like that might result in lower costs without sacrificing performance; or recommend changes in other requirements regarding the product or service involved. Care should be exercised in this connection to avoid potential conflict of interest situations. (See FAR subpart 9.5.)

1815.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

(a) Requests for proposals (RFP's), including amendments to them, shall be prepared by the contracting office, with assistance from technical or other offices as required, and be issued by the contracting officer or an authorized representative. The RFP has a twofold purpose:

(1) To convey to prospective offerors the information they need to prepare a proposal properly, and

(2) To solicit the information that procurement and technical personnel need to appraise proposals.

(b) RFP's shall specify a date for their submission. Any extension of time granted to one prospective offeror shall be granted uniformly to all. Any RFP shall be issued simultaneously to all prospective offers; no prospective offeror shall be given an advantage. When advisable, particularly in the case of research and development, proposals shall be requested in two parts:

(1) An unpriced technical proposal, and

(2) A cost proposal cross-referenced to the technical proposal (see 1815.406-70).

1815.406-2 Part I—The Schedule.

Section C, Description/specifications/work statement. (a) In source evaluation board procurements, when detailed program or project support plans will be required as part of the offeror's proposal, but will not be important discriminators in the evaluation process and cover only technical or management support to the primary product or service being offered, describe the requirements for those plans in separate appendices to the statement of work (see 1815.406-70(a)(7)).

(b) In solicitations for cost-reimbursement support services contracts requiring price quotations, include available data regarding the quantity and quality of supplies and services required, set forth in terms of work hours of identifiable categories of labor, including experience and related qualifications, and in terms of quantities of supplies, all exclusive of costs (see 1815.406-70(b)(8)).

1815.406-4 Part III—List of documents, exhibits, and other attachments.

Section J, List of attachments. List here all of the documents, exhibits, and other attachments making up the solicitation package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example: work frequency schedules, work breakdown structures, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the solicitation proper).

1815.406-5 Part IV—Representations and instructions.

(a) *Section K, Representations, certifications, and other statements of offerors or quoters.* See 1845.104(b).

(b) *Section L, Instructions, conditions, and notices to offerors or quoters.* (1) State if the selected contractor will require access to classified information (see NMI 1650.1, Industrial Security Policies and Procedures).

(2) Indicate the method and format of price quotation desired (fixed-price or cost-reimbursement, if known at the time), including a reference to the necessity for cost or price breakdown.

(3) Describe the information required to support proposed prices; e.g., subcontract structure, purchasing system, royalty, and cost or price information (see FAR subparts 15.7 and 15.8, and FAR part 44).

(4) Include instructions for disposing of drawings and specifications supplied with the solicitation.

(5) Include a statement of information required to facilitate evaluation of technical and financial capabilities and a statement covering special technical capabilities any contractors must possess.

(6) Include an instruction reflecting desirability of a separation between the offeror's business management proposal and technical proposal. For evaluation purposes, separate proposals, if time permits, should be received; therefore the format should be flexible enough to permit separate requirements (see 1815.406-70).

(7) State that the solicitation does not commit the Government to pay any cost incurred in submitting the offer or in making necessary studies or designs for its preparation, nor to contract for services or supplies.

(8) Include a statement that "Proposals must set forth full, accurate, and complete information as required by the solicitation (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001."

1815.406-70 Instructions for technical proposal and business management proposal submission.

When it is contemplated that the contract will exceed $1,000,000 (or, if appropriate, lesser amounts), the solicitation should require submission of the information in paragraphs (a) and (b) of this section, if applicable, in addition to any other information specified elsewhere in this section 1815.406.

(a) *Technical proposal.* Proposals should include the following:

(1) The method by which the offeror proposes to solve the technical problems of the project, other than information to be furnished elsewhere as a part of program or project support plan summaries (see paragraph (a)(7) of this section).

(2) Any specific exceptions to proposed technical requirements.

(3) A statement of background experience in fields relating to the procurement.

(4) Names and résumés of experience of key technical personnel who will be employed on the project and the extent to which each will participate, together with an organization chart of the segment of the offeror's organization that will be directly assigned to the project, listing names and job categories.

(5) Description and location of the company-owned research, test, and production equipment and facilities available for use on the project, accompanied by a separate list of any additional facilities or equipment required in the performance of the work, and a separate list of existing Government facilities available to the contractor and required for use on the project.

(6) Hourly time estimates (without pricing information) by labor class for each phase or segment of the project, the extent to which these estimates are based on the use of employees presently on the offeror's payrolls who will be available for the work as required, and an indication of the number and types of personnel necessary to be hired and arrangements made to obtain them.

(7) For procurements described in 1815.406-2(a)—

(i) As part of the original proposal, estimates of the cost and work force to perform major tasks under each requirement separately identified, and a summary of the major task elements to perform each requirement; and

(ii) A statement by each offeror that it is understood that, if selected for negotiations, the offeror will ultimately be required to furnish a detailed program or project support plan that will be negotiated into the contract prior to award.

(b) *Business management proposal.* Proposals should include the following:

(1) The organization proposed for carrying out the project, including organization charts showing the interrelationship of business, technical, and subcontract management and an indication of all levels of operation and management, from lower levels through intermediate management to top-level management.

(2) A summary of the experience of all key personnel who will conduct the managerial affairs of the project.

(3) Contractual procedures proposed for the project to effect administrative and engineering changes, describing any differences from existing procedures.

(4) The extent to which the offeror has invested corporate funds in research and development work in the project area or directly related areas and plans for future expenditures for such work; and the extent, if any, to which the offeror is willing to participate in the cost of the project.

(5) A statement as to—(i) The capacity at which company-owned research, test, and production equipment and facilities required to perform the work are currently working;

(ii) The extent to which they could handle the additional workload imposed by this project;

(iii) The cost of any additional facilities or equipment required to perform the work, with information as to whether they will be contractor-furnished or Government-furnished; and

(iv) The value of existing Government facilities available to the offeror and required for use on the project, showing the Government agencies and facilities contracts involved.

(6) A statement of past performance and experience, including—(i) A list of Government contracts in excess of $1,000,000 received in the past three years or currently in negotiation involving mainly research and development work, showing each contract number, the Government agency placing the contract, the type of contract, and a brief description of the work;

(ii) For each cost-reimbursement contract listed pursuant to paragraph (b)(6)(i) of this section, a list of amounts of cost overruns or underruns, reasons for them, and percentage of fixed fee;

(iii) For each contract listed pursuant to paragraph (b)(6)(i) of this section, a record of contract completion as against completion date anticipated at the time of entering into the contract, with explanations for completion delays; and

(iv) An identification and explanation of any terminations for default or convenience.

(7) A balance sheet for the offeror's last fiscal year, accompanied by a profit and loss statement.

(8) A detailed cost or price proposal, furnished as a separate, detachable element of the business management proposal and based on the effort described or estimated in the solicitation. This cost or price proposal is a requirement for the proposal to be responsive. If the offeror believes the work can be accomplished more efficiently with organizational plans, staffing, management, or equipment differing from those indicated in the solicitation, it may also submit an alternative proposal supported by a detailed cost or price proposal (see 1815.406-2, section C, (b)); this alternative proposal must be in addition to, not in lieu of, the basic proposal.

1815.407 Solicitation provisions.

(a) The provision at FAR 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals, prescribed in FAR 15.407(c), shall not be used in solicitations for the Small Business Innovation Research (SBIR) program or for broad agency announcements listed in 1835.016. See instead 1815.407-70(b).

(b) The provision at FAR 52.215-12, Restriction on Disclosure and Use of Data, prescribed in FAR 15.407(c), shall not be used in NASA solicitations. See instead 1815.407-70(a).

1815.407-70 NASA solicitation provisions.

(a) The contracting officer shall insert in RFP's and RFQ's (but not in solicitations for information or planning purposes) the provision at 1852.215-72, Restriction on Use and Disclosure of Proposal/Quotation Information (Data). (See also 1815.509-70(a)).

(b) In accordance with 1815.412, the contracting officer shall use the provision at 1852.215-73, Late Submissions, Modifications, and Withdrawals of Proposals (AO and SBIR Programs), in lieu of the provision at FAR 52.215-10 in Announcements of Opportunity issued pursuant to subpart 1870.1 and in Small Business Innovation Research (SBIR) solicitations. This provision allows the project office to accept late proposals or proposal modifications and late best and final offers if, in the selection official's judgment, to do so is in the Government's best interest.

(c) The contracting officer may insert a provision substantially as stated at 1852.215-74, Alternate Proposals, in competitive requests for proposals if receipt of alternate proposals would benefit the Government. See FAR 52.215-13(d).

(d) In accordance with 1815.406-5(b)(7), the contracting officer shall insert the provision at 1852.215-75, Expenses Related to Offeror Submissions, in all requests for proposals.

(e) In accordance with 1815.406-5(b)(8), the contracting officer shall insert the provision at 1852.215-76, False Statements, in all requests for proposals to advise offerors of the penalty for making false statements in proposals.

(f) The contracting officer shall insert the provision at 1852.215-77, Preproposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a preproposal or pre-bid conference. Insert the appropriate specific information relating to the conference. Supplemental information, such as an agenda summary and whether a tour is included, may be identified in "Other Information."

(g) The contracting officer shall insert the provision at 1852.215-80, Disposal of Unsuccessful Proposals, in competitive requests for proposals.

(h) For grouping items in the solicitation in contemplation of an aggregate award, see 1814.201-670(b).

(i) For requiring full quantities to be proposed, see 1814.201-670(c).

1815.412 Late proposals and modifications.

This section applies to broad agency announcements listed in 1835.016 and SBIR Phase I and Phase II solicitations only. See FAR 15.412 for policy regarding late proposals/modifications under other solicitations.

(a) Proposals, or modifications to them, received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the submission of the late proposal or modification, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering the proposal.

(b) The selection official or a designee shall determine whether to consider the proposal.

(c) Offerors may withdraw proposals any time before award, provided the conditions in paragraph (b) of the provision at 1852.215-73, Late Submissions, Modifications, and Withdrawals of Proposals (AO and SBIR Programs), are satisfied.

1815.413 Disclosure and use of information before award.

(a) The alternate procedures at FAR 15.413-2 shall be used for NASA procurements in lieu of those prescribed at FAR 15.413-1. The policies and procedures of FAR 15.413 and NFS 1815.413-2 shall apply both before and after award. The notice at FAR 15.413-2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. (See 1805.303-70(a)(1)(iii) regarding release of the names of firms submitting offers.)

(b) During evaluation proceedings, whether or not a source evaluation board is used, NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions. (Information shall be provided to unsuccessful offerors in accordance with FAR 15.1003 and 1815.1003. See also 1815.413-2.)

1815.413-2 Alternate II.

(a) *General.* The references in FAR 15.413-2 to the provision at FAR 52.215-12 shall be considered to be references to the provision at 1852.215-72.

(b) *Policy.* It is NASA policy to have proposals evaluated by the most competent technical and management sources available. When it is necessary to disclose a proposal outside the Government to meet NASA's evaluation needs—

(1) Personnel participating in evaluation proceedings shall be instructed to observe the restrictions in FAR 15.413 and 1815.413.

(2) The requirements in paragraphs (c) and (d) of this section shall be met.

(3) JPL and other non-government participants in evaluation proceedings shall be appointed as special government employees, except for evaluation proceedings resulting from Broad Agency Announcements (1835.016) and unsolicited proposals.

(c) *Approval.* Under FAR 15.413-2(f)(1), only the Assistant Administrator for Procurement, NASA Headquarters, or a designee, with the concurrence of General Counsel or designee, is authorized to make a decision to disclose a proposal outside the Government or JPL, except that:

(1) Proposals submitted in response to Announcements of Opportunity may be disclosed in accordance with 1870.103, App. I, and NMI 1156.4 and any amendments to them and

(2) Unsolicited proposals and proposals in response to a NASA Research Announcement may be disclosed with the concurrence of the NASA official one level higher than the NASA program official responsible for overall conduct of the evaluation.

(d) *Agreement with evaluator.* When, in accordance with paragraph (c) of this section, it is determined to disclose a proposal outside the Government or JPL, the following agreement, or a similar arrangement appropriate for the treatment of the proposal, shall be obtained in writing from the evaluator prior to disclosure. Also, the releasing official shall review the proposal to ensure that the notice at FAR 15.413-2(e) (see 1815.413(a)) is affixed before it is disclosed to the evaluator.

CONDITIONS FOR EVALUATION OF PROPOSALS (DEC 1988)

(1) Whenever NASA furnishes a proposal for evaluation, the recipient agrees to use the information in the proposal for NASA evaluation purposes only.

(2) This requirement does not apply to information obtained from another source without restriction.

(3) The NASA notice on the cover sheet, and any notice that may have been placed on the proposal by its originator, shall be applied to any reproduction or abstract. Upon completion of the evaluation, the recipient shall return all copies of the proposal and abstracts, if any, to the NASA office that initially furnished the proposal for evaluation.

(4) Unless authorized by the NASA initiating office, the recipient may not contact the originator of the proposal concerning any aspect of its contents.

(End of agreement)

[54 FR 28239, July 5, 1989, as amended at 54 FR 39371, Sept. 26, 1989]

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.

NASA will foster and encourage the submission of unsolicited proposals relevant to agency mission requirements by expeditious and equitable handling of all unsolicited proposals.

1815.503 General.

(a) *Submission to other agencies or JPL.* NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent. Proposals submitted to NASA shall not be transferred to JPL for procurement without the offeror's written permission.

(b) *Transferring proposals.* When a reviewing official determines that an unsolicited proposal is not related to NASA's mission or may be of interest to agencies in addition to NASA, the proposal control officer may identify for the offeror other agencies whose missions may bear a relationship to the subject matter of the unsolicited proposal. NASA shall not respond to an unsolicited proposal by transferring it to another agency for action without the offeror's written consent.

(c) *Relationship to award.* All unsolicited proposals may be prepared in a similar fashion, since NASA does not have separate "contract proposal" and "grant proposal" categories. An unsolicited proposal may result in the award of a contract, a grant, a cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NHB 5800.1) applies.

1815.504 Advance guidance.

1815.504-70 Unsolicited proposal brochure.

The Office of Procurement (Code HP) is responsible for preparing for public use a brochure titled "Guidance for the Preparation and Submission of Unsolicited Proposals," which shall be provided without charge by procurement and other NASA officials in response to requests for proposal submission information. The brochure, issued pursuant to FAR 15.504, constitutes NASA's single, official, general-purpose guidance document for public use in submitting unsolicited proposals. A deviation is required for use of any modified or summarized version of the brochure or for alternate means of general dissemination of unsolicited proposal information. The Headquarters Office of Small and Disadvantaged Business Utilization (Code K) is responsible for internal distribution of the brochure. Installations and individuals should request bulk supplies from that office.

1815.505 Content of unsolicited proposals.

1815.505-70 Unsolicited renewal proposals.

Renewal proposals, (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts. Unsolicited renewal proposals within the scope of an open NASA Research Announcement (NRA) shall be evaluated in the same manner as unsolicited proposals described in 1815.506(b).

1815.506 Agency procedures.

(a) *NASA unsolicited-proposal coordinating offices.* (1) NASA Headquarters and each NASA field installation shall designate an organizational entity as its unsolicited-proposal coordinating office for receiving and coordinating the handling and evaluation of unsolicited proposals in accordance with the policies and procedures of FAR subpart 15.5, this subpart 1815.5, and NHB 5800.1.

(2) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the coordinating office to the proper installation. Field installation coordinating offices are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(3) At Headquarters, responding to general inquiries from academic researchers is the responsibility of the Headquarters coordinating office, while handling inquiries from all other offerors is the responsibility of the Headquarters Acquisition Division (Code HW).

(b) *Relationship to open NRAs.* An unsolicited proposal for a new effort, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA under 1835.016-70(c), provided that the evaluating office can either:

(1) State that the proposal is not at a competitive disadvantage or

(2) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions.

If these conditions cannot be met, the proposal must be evaluated separately.

(c) *Reconsideration.* An appropriately revised submission that is responsive to comments contained in an initial determination of inadequacy under FAR 15.506-1 shall be reconsidered by NASA officials.

(d) *Information requirements.* Coordinating offices shall keep records of unsolicited proposals received and shall provide prompt status information to requestors. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (large business, small business, university, or nonprofit institution).

[54 FR 28239, July 5, 1989, as amended at 55 FR 27088, June 29, 1990]

1815.507 Contracting methods.

A justification for other than full and open competition (JOFOC) is required in accordance with FAR 6.302 and 6.303. See 1805.202 for guidance in complying with the preaward synopsis requirement at FAR 15.507(b)(4).

1815.508 Prohibitions.

FAR 15.508(b) shall not apply to NASA; see instead 1815.508-70.

1815.508-70 NASA prohibitions.

Information (data) in unsolicited proposals furnished to the Government is to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with procedures in, FAR 15.413-2 and 1815.413.

1815.509 Limited use of data.

FAR 15.509 shall not apply to NASA. See instead 1815.509-70.

1815.509-70 Limited use of proposals.

(a) The provision at 1852.215-72, Restriction on Use and Disclosure of Proposal/Quotation Information (Data), is applicable to unsolicited proposals.

(b) If an unsolicited proposal is received with a more restrictive legend than made applicable by paragraph (a) of this section, the procedures of FAR 15.413-2(c) apply.

(c) Upon receipt in the coordinating office, the Government notice in FAR 15.413-2(e) shall be placed on the cover sheet of all unsolicited proposals.

(d) Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with the procedures prescribed in, FAR 15.413-2(f) and 1815.413.

(e) If a request is made under the Freedom of Information Act for any information contained in an unsolicited proposal, the procedures of FAR 15.413-2(g) apply.

1815.570 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Participation and Cooperation in Aeronautical and Space Programs.

Subpart 1815.6—Source Selection

1815.608 Proposal evaluation.

The authority in FAR 15.608(b) to determine in writing that rejection of all proposals received in response to a solicitation is in the public interest is delegated to the contracting officer.

1815.608-70 Technical evaluation.

(a) Technical evaluation should include consideration of—

(1) The offeror's understanding of the scope of the work as shown by the scientific and technical approach proposed;

(2) The availability and competence of experienced engineering, scientific, or other technical personnel;

(3) The availability of necessary research, test, and production facilities;

(4) Experience or pertinent novel ideas in the specific branch of science or technology involved;

(5) The offeror's willingness to devote its resources to the proposed work with appropriate diligence; and

(6) The offeror's proposed method of achieving the reliability required.

(b) In making this evaluation, technical personnel may be given access to portions of the business proposals upon request. After evaluation and preparation of written findings by the technical personnel, proposals shall be returned to the negotiator. The contracting officer shall review the documentation supporting the written findings of the technical personnel to determine that such documentation is adequate and complete.

1815.608-71 Automatic data processing equipment.

In evaluating proposals containing a significant amount of cost for automatic data processing equipment (ADPE), the contracting officer should obtain from the offeror a feasibility study and a lease-versus-purchase study covering the acquisition of such equipment or service. The contracting officer shall obtain the recommendations of the price analyst and appropriate ADPE technical personnel as to the adequacy of the studies and the offeror's determinations resulting from the studies. Particular attention should be given to proposals containing a high dollar amount for renting ADPE or complete systems to be used solely for performing the contract. Current Office of Management and Budget criteria (NHB 2410.1, Information Processing Resources Management) should be used, when applicable, as a guide in evaluating the offeror's studies. Contractors should be encouraged to—

(a) Use ADPE machine time available within a reasonable geographic distance;

(b) Use telecommunications links to remote Government-owned or—leased ADPE systems; and

(c) Purchase ADPE in preference to leasing the equipment when financial advantage is the sole or overriding factor.

1815.610 Written or oral discussion.

FAR 15.610(c)(2) shall not be applied in negotiation of NASA procurements. It is contrary to NASA procedures that limit discussions with offerors (see FAR 15.613 and 1815.613).

1815.613 Alternative source selection procedures.

1815.613-70 General.

Pursuant to FAR 15.613, the source selection procedures in 1815.613 that limit discussions with offerors and that otherwise differs from procedures described in FAR subpart 15.610, apply to all procurements negotiated by NASA. Other than these differences, FAR 15.6 shall apply. The evaluation of proposals received may be accomplished in a number of ways. Evaluation of proposals received in response to an Announcement of Opportunity shall be accomplished in accordance with 1870.103, Appendix I. Proposals received in response to an open NASA Research Announcement will be evaluated in accordance with 1835.016-70(e). Unsolicited proposals identified by an evaluating office as being within the scope of an open NASA Research Announcement shall be evaluated under 1835.016-70(d). Small Business Innovation Research (SBIR) proposals will be evaluated in accordance with the SBIR program solicitations issued under the authority of section 9 of the Small Business Act (15 U.S.C. 638). The applicability of and rules for the conduct of source selection in accordance with formal source evaluation board (SEB) procedures are covered in 1815.613-71. The policies prescribed in 1815.613-71 shall also be applied to other negotiated procurements.

1815.613-71 Evaluation and negotiation of procurements conducted in accordance with source evaluation board (SEB) procedures.

(a) *Applicability.* (1) Unless an exception applies, these SEB procedures shall be followed in all competitive negotiated procurements of $25,000,000 or more, including those in which the initial contract is less than $25,000,000 but it is likely that the source selected will receive contracts for follow-on or later phases of the same project that, when added to the initial contract, will result in a combined total of

$25,000,000 or more. (Examples are options and later phases as in A-109 procurements.) Exceptions to this requirement include architect-engineer procurements and procurements of ADP subject to the Brooks Act (40 U.S.C. 759), as implemented by the Federal Information Resources Management Regulation (FIRMR) (41 CFR part 201). However, the use of SEB procedures is optional for procurements of ADP subject to the Brooks Act.

(2) Detailed procedures regarding designation and operation of SEBs are in 1870.303, App. I, commonly known as the Source Evaluation Board Handbook.

(3) Evaluation of system design concepts submitted in response to requests for alternative system design concept proposals in support of a major system acquisition subject to NMI 7100.14 should include, in addition to consideration of proposed system function and performance capabilities to meet mission needs and program objectives, an analysis of resources required and of benefits to be derived by trade-offs, when feasible, among technical performance, acquisition costs, ownership costs, time to develop and procure, and the relevant accomplishment record of competitors.

(4) The formal SEB procedures (1870.303, App. I) may be used in other competitively negotiated procurements, if the source selection official determines it desirable to do so.

(b) *Evaluation and selection procedures*—(1) *Responsibility of source selection official.* In the final analysis, NASA's judgment on the totality of the evaluation will be that of the source selection official, including assessment of the procedures followed by the SEB, the validity of its substantive evaluations, the relative significance of the several areas of evaluation and their weightings in the light of all the information produced by the source evaluation and selection process.

(2) *Evaluation factors, subfactors, and elements and weights.* Establishing evaluation factors, subfactors, and elements and their weights requires the exercise of judgment on a case-by-case basis. They should be tailored to the requirements of each procurement. Technical excellence, price or estimated cost, and contractor management capability are important factors in selection. Their relative importance depends on the nature of the products or services procured. Any factor may tip the balance when competition is very close. Evaluation factors, subfactors, and elements shall be described in each RFP sufficient to inform evaluators and prospective offerors of the significant matters to be addressed in proposals. The evaluation factors (Mission Suitability, Relevant Experience and Past Performance, Cost, and Other Considerations) shall be described, and a statement of their relative importance included. In addition, the weights assigned to the Mission Suitability subfactors and elements shall be included in the RFP.

(3) *Initial identification of proposals not considered acceptable.* (i) After review of committee ratings and other information known to the committees or the SEB and before ranking of proposals by the SEB, the SEB may discontinue the evaluation of any proposal that is unacceptable because—

(A) It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements of the RFP;

(B) In research or development procurement, a substantial design drawback inheres in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(C) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(ii) Simple technical nonresponsiveness in the sense in which the term is used in sealed bidding is not alone sufficient to constitute unacceptability if the proposal is otherwise competitive, and written and/or oral discussions or negotiations after selection reasonably offer the likelihood of resolution. When there is doubt as to whether a proposal should be rejected initially as unacceptable, that doubt shall be resolved by including it for further consideration.

(iii) Documentation must be prepared by the SEB as to why the deficiencies of any proposal are believed to be of sufficient significance to warrant discontinuing evaluation of the proposal at this point in the process.

(4) *Determination of competitive range.* (i) After initial identification of proposals not considered acceptable, the SEB shall tentatively rank the remaining proposals in accordance with the established scoring system. The SEB should not give scores for cost as such. After this ranking is completed, the proposals shall be reviewed to determine which are within the competitive range; namely, those having a reasonable chance of being selected for final award. In making this determination, the SEB, together with the contracting officer, shall evaluate the potential for improving the competitive position of the proposals by written or oral discussions conducted in accordance with paragraph (b)(5) of this section.

(ii) The competitive range consists of the best proposals, considering mission suitability, cost or price, relevant experience and past performance, and other considerations. When there is doubt as to whether a proposal is within the competitive range, that doubt shall be resolved by including it.

(iii) The initial number of offerors whose proposals are considered as being within the competitive range may be narrowed as a result of the written or oral discussions. However, a proposal initially included in the competitive range should not be rejected without giving the offeror an opportunity to submit a revised proposal to serve as the basis for establishing the new competitive range, unless the discussions relating to an ambiguity or omission make it clear that the proposal should not have been included in the competitive range initially.

(5) *Conduct of written or oral discussions*—(i) *General.* Careful judgment must be exercised in determining the extent of discussions. In some cases, good business practice may warrant having more than one round of discussions with the offerors whose proposals are considered in the competitive range. The time available, the expense and administrative limitations, and the size and significance of the procurement should all be considered in deciding on the type, duration, and depth of the discussions.

(ii) Cost-reimbursement contracts and all contracts for research and development.

(A) The contracting officer, in concert with or on behalf of the SEB, will conduct written and/or oral discussions of the effort to be accomplished and the cost or price of the effort with all offerors determined to be within the competitive range. The discussions are intended to assist the SEB or other evaluators:

(*1*) In understanding fully each offeror's proposal and its strengths and weaknesses based upon the individual efforts of each offeror,

(*2*) In assuring that the meanings and the points of emphasis of RFP provisions have been adequately conveyed to the offerors so that all are competing equally on the basis intended by the Government,

(*3*) In evaluating the personnel proposed by each firm, and

(*4*) In presenting a report to the Source Selection Official that makes the discriminations among proposals clear and visible.

In this process, prior to contractor selection, the Government's interests are not served by its assuming the role of an information exchange or clearinghouse.

(B) In cost-reimbursement type contracts and all research and development contracts, the contracting officer shall point out instances in which the meaning of some aspect of a proposal is not clear and instances in which some aspects of the proposal failed to include substantiation for a proposed approach, solution, or cost estimate.

(C) However, where the meaning of a proposal is clear and the Board has sufficient information to assess its validity and the proposal contains a weakness that is inherent in an offeror's management, engineering, or scientific judgment or which is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weaknesses. Discussions are useful in ascertaining the presence or absence of strengths and weaknesses. The possibility that such discussions may lead an offeror to discover that it has a weakness is not a reason for failing to inquire into a matter where the meaning is not clear or where insufficient information is available, since understanding of the meaning and validity of the proposed approaches, solutions, and cost estimates is essential to a sound selection. Offerors should not be informed of the relative strengths or weaknesses of their proposals in relation to those of other offerors. To do so would be contrary to other regulations which prohibit the use of auction techniques (see FAR 15.610(d)(3)). In the course of discussions, Government participants should be careful not to transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas.

(D) The foregoing guidelines are not all-inclusive. Careful judgment must be exercised in the light of all the circumstances of each procurement to promote the most advantageous selection from the standpoint of the Government while, at the same time, maintaining the fairness of the competitive process.

(E) The contracting officer shall give each offeror a reasonable opportunity (with a common cut-off date for all) to support and clarify its proposal in a best and final offer which shall be submitted at the conclusion of discussions. An offeror may, on its own initiative, revise its proposal and make corrections or improvements until the established cut-off date.

(iii) Fixed-price contracts other than for research and development.

(A) In fixed-price type contracts other than for research and development, the specifications ordinarily describe the Government's requirements with more particularity than is possible in cost reimbursement or research and development contracting so that less emphasis is placed on an offeror's introduction of scientific, engineering, and management innovations. The contracting officer will conduct discussions in accordance with the provisions of paragraph (b)(5)(ii) of this section, except for the difference in paragraph (b)(5)(iii)(B) of this section.

(B) The contracting officer, in written or oral discussions, shall point out instances in which some aspect of a proposal contains a weakness in relation to the Government's requirements. But, as provided in paragraph (b)(5)(ii) of this section, the contracting officer shall neither point out the relative strengths or weaknesses of a proposal in relation to those of other offerors nor transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas. The contracting officer shall point out price elements that do not appear to be justified and shall encourage offerors to put forward their most favorable price proposals, but shall not discuss, disclose, or compare price elements of any other offeror.

(6) *Conduct of negotiations prior to selection.* If, after conclusion of written or oral discussions, the SEB considers that the evaluation findings thus far completed are not sufficiently comprehensive for the Source Selection Official to make a decision, it may be prudent and necessary to conduct further discussions or final negotiations with those offerors remaining in the competitive range prior to presentation of the findings to the Source Selection Official. This course of action must be considered as an exception to the SEB process and therefore may be accomplished only with the approval of the Assistant Administrator for Procurement.

(7) *Notice and debriefing.* When a proposal is no longer to be considered for contract award, the offeror shall be promptly notified, in writing, together with a general, reasonably brief explanation of the major reasons. If an offeror requests, in writing, a debriefing as a result of this notice, it will be accorded a formal debriefing in accordance with subpart 1815.10. The debriefing should be provided at the earliest feasible time, which normally shall be after announcement of the selection decision and before award of the contract. However, when the exigency of the situation will not permit delaying the award in order to debrief

unsuccessful offerors, debriefings may be conducted after award.

(8) *Report to source selection official.* The SEB report shall summarize the primary points of discussion and show the effects of the discussions on the evaluation of proposals. The report shall set forth the strengths and weaknesses of each proposal, with an estimate of the potential for correction of the principal weaknesses identified. The report should also state the SEB's estimate of the approximate impact on cost or price that will result from the elimination of correctable weaknesses during negotiations after selection.

1815.613-72 NASA solicitation provision.

The provision at 1852.215-70, Increases in Estimated Costs, shall be included in all RFP's to be evaluated pursuant to SEB procedures, if award of a cost-reimbursement contract (with or without incentive arrangements) is contemplated. The purpose of this provision is to advise offerors selected for final negotiation that they may not unilaterally increase their estimated costs except for the reasons cited in the provision. Government negotiators are cautioned that when the second exception in the provision applies, there may be instances in which such increases in costs do not warrant additional fee.

Subpart 1815.7—Make-or-Buy Programs

1815.704 Items and work included.

Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000.

1815.706 Evaluation, negotiation, and agreement.

The make-or-buy program review by the installation's small and disadvantaged business utilization specialist and the SBA representative (see FAR 15.706(b)) should be concurrent with the contracting officer's review. When urgent circumstances preclude this or if the small and disadvantaged business specialist or SBA representative fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and transmit copies to the specialist and the representative.

1815.708 Contract clause.

1815.708-70 NASA contract clause.

(a) The contracting officer shall insert the provision at 1852.215-78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.703. This provision shall be used in conjunction with the clause at FAR 52.215-21, Changes or Additions to Make-or-Buy Program. The contracting officer may add an additional paragraph(s) identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215-79, Price Adjustment for "Make-or-Buy" Changes, in contracts that include FAR 52.215-21 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data.

1815.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) When an exemption is granted under FAR 15.804-3(e)(2) for repetitive submissions of catalog items, Government approval of the exemption claim shall state the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the exemption's continuation.

(b) When exempting submission under FAR 15.804-3(e)(3), the contracting officer may, by a solicitation provision or otherwise, either dispense with the requirement for an SF 1412 or limit the data required to be submitted on the form. For example, if the item being procured is similar to a commercial item, only an explanation of a price differential may be needed. If the fact of substantial sales to the general public is well known, the actual sales prices, but not the quantity of sales, may be required.

(c) The authority in FAR 15.804-3(i) to waive the requirement for cost or pricing data is delegated to the Assistant Administrator for Procurement, without power of redelegation. Set forth below is a format for the determination and findings to be made by the Assistant Administrator for Procurement to waive the requirement for submission and certification of cost or pricing data as required by 10 U.S.C. 2306(f). Requests for waivers shall be addressed to NASA Headquarters, Contract Pricing and Finance Office, Code HC.

NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION

Washington, DC 20546

Determination and Findings

Authority to Waive Submission of Cost or Pricing Data and Certificate

On the basis of the following findings and determination, the requirement for submitting the cost or pricing data and the certificate described below may be waived pursuant to the authority of 10 U.S.C. 2306(f), as implemented by NASA FAR Supplement 1815.804-3(c).

Findings

1. The (1) proposes to enter into a contract with (2) for the procurement of (3).

2. Pursuant to FAR 15.804-2, the proposed contractor is required to submit cost or pricing data as defined in FAR 15.801, together with the certificate in FAR 15.804-4. However, waiver of submission of the cost or pricing data described below is justified for the reasons indicated: (4)

Determination

The requirement for submission of cost or pricing data described in the above findings for the proposed procurement is hereby waived.

Date

NOTES:

(1) Name of installation.

(2) Name of proposed contractor.

(3) Brief description of supplies or services.

(4) Identification of the cost or pricing data requirements to be waived. The waiver may be partial, i.e., limited to particular cost or pricing data. Also describe the circumstances and conditions that make the proposed procurement an exceptional case, and state the reasons justifying the proposed waiver.

1815.805-4 Technical analysis.

1815.805-470 Responsibilities of NASA requirements personnel.

NASA requirements personnel are responsible for conducting a technical evaluation of proposals to determine whether the supplies or services offered will meet specifications. In addition, when a cognizant contract administration office is not requested to perform a technical analysis of proposals in accordance with FAR 15.805-5, the analysis will be the responsibility of NASA requirements personnel.

1815.805-5 Field pricing support.

(a) A field pricing report shall be obtained in accordance with FAR 15.805-5(a)(1), except that for cost-reimbursement contracts, the requirement for obtaining a field pricing report is $1,000,000.

(b) Whenever available data are adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination. Information of the type described in paragraphs (b) (1) through (6) of this section, which is often available to the contracting officer from the cognizant contract administration office or internal NASA sources, should be useful in determining the extent of any field pricing support needed (no single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally need to be accompanied by data concerning the base elements—labor hours, material costs, and so forth—to which the rates apply):

(1) In-house engineering determination of the level of effort required in connection with research and development or study contracts.

(2) Audited cost information from contract awards in process, or recently negotiated contracts.

(3) Adequately reviewed data on proposed subcontract items that constitute a major portion of the prime contract price proposal.

(4) Prices of standard commercial items that constitute a major portion of the prime contract price proposal.

(5) Special forward pricing formulas or rates, such as for support items or forecast overhead rates, prescribed in an existing advance agreement.

(6) Current labor rates, overhead rates, loading factors, and per diem rates, and lot data based upon actual costs and labor hours.

(c) When the contracting officer determines that information adequate to establish price reasonableness without field pricing support is available within NASA, but that a review by the auditor is still needed, the contracting officer should address the request directly to the cognizant audit office. The cognizant ACO shall be provided an information copy of this request.

(d) When input from the ACO or auditor involves merely a verification of information, contracting officers are encouraged to obtain this verification by direct telephone contact with the cognizant office and shall record it in the contract file.

(e) When the threshold at 1815.805-5(a) is met and the cost proposal is for a product of a follow-on nature, notwithstanding any other provision of this section 1815.805-5, a complete report shall be requested from the cognizant contract administration office. The field pricing report will include, but not be limited to, actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis.

[54 FR 28239, July 5, 1989, as amended at 54 FR 53631, Dec. 29, 1989]

1815.807 Prenegotiation objectives.

Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated. Matters for negotiation may arise from proposal evaluations, contractor requests, unique installation requirements, or other Government agencies' requirements, among other things.

1815.807-70 Content of the prenegotiation position memorandum.

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions on any open issues and identify and justify the elements that are acceptable as proposed. Since the PPM will ultimately become the basis for negotiation, it should be structured to provide an audit trail to the contract negotiation memorandum (see FAR 15.808 and 1815.808). Generally, the PPM should address the following subjects, in the order presented:

(a) *Introduction.* Include a brief description of the procurement and a brief history indicating the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the procurement). In addition, the negotiation schedule should be addressed and the Government negotiating team members identified by name and position.

(b) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the procurement, including such items as—

(1) Letter-contract or precontract cost requirements;

(2) Government property to be furnished;

(3) Contract option requirements;

(4) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government);

(5) Plant reconversion or plant clearance (see 1845.106-71); and

(6) Any deviations, special clauses, or unusual conditions anticipated.

(c) *Cost and profit/fee analysis.* (1) Include a parallel tabulation, by element of cost and profit/fee, of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position. For each element of cost, compare the contractor and Government estimates and explain how each was developed, including the estimating assumptions and projection techniques employed. Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective.

(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal should be highlighted and explained, as should technical evaluation results that caused the Government's cost negotiation objectives to differ significantly from the contractor's proposed cost (such as differences in staffing). There should be an identification and a brief discussion of each major subcontract involved, citing the type of subcontract and stating the degree of analysis performed on the subcontract cost estimate. In addition, the rationale for the Government's profit/fee objectives and a completed copy of the NASA Form 634, Structured Approach—Profit/Fee Objective, if appropriate, should be included.

(3) Include particulars of the disposition of audit recommendations here. Resolution shall be considered accomplished when negotiation approval is granted. If, for some reason, the particulars cannot be included in the PPM, the disposition of the audit recommendations must be documented in the price negotiation memorandum (see FAR 15.808) or in other relevant file memoranda.

(d) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability. For an incentive contract, including award-fee contracts, describe the planned structuring arrangement in terms of profit/fee patterns, share lines, ceilings, and so forth.

(e) *Negotiation approval sought.* Indicate the specific approvals sought; e.g., dollar parameters, special clauses/conditions not constituting deviations, type of contract, fee objectives, and so forth.

1815.807-71 Installation reviews.

Each contracting activity shall establish a formal system for the prenegotiation review of any proposal over $250,000 ($100,000 at Stennis Space Center, Jet Propulsion Laboratory, Space Station Procurement Office, and Headquarters Acquisition Division). The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the procurement and shall be determined by each installation. The primary purpose of these reviews is to ensure that the negotiator, or negotiating team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

[54 FR 28239, July 5, 1989, as amended at 55 FR 27088, June 29, 1990]

1815.807-72 Headquarters reviews.

Approval of the prenegotiation position by the Assistant Administrator for Procurement is required before negotiations on any procurement action selected for Headquarters review are entered into. Generally, at the time a procurement is processed as a Master Buy Plan (MBP) action under subpart 1807.71, a decision will have been made as to whether the prenegotiation position will be subject to Headquarters review and approval. However, prenegotiation positions on MBP procurement actions when the prenegotiation position was not initially selected for Headquarters review and approval, and non-MBP procurement action prenegotiation positions, may be selected for Headquarters review and approval at any point in the acquisition cycle prior to actual negotiations.

(a) *Scheduling of presentation.* When a prenegotiation presentation is required by Headquarters or requested by the installation concerned, scheduling of the presentation will be arranged by the Office of Procurement, Program Operations Division (Code HS), in consultation with appropriate Headquarters program officials. The installation shall notify Code HS sufficiently in advance of the desired presentation to permit scheduling and preparation by Headquarters staff.

(b) *Advance information.* Not less than ten working days in advance of the scheduled prenegotiation presentation, the installation shall provide Code HS with the following:

(1) Five copies of the PPM.

(2) Five copies of any briefing charts and/or viewgraphs to be used in the

presentation. Briefing charts and/or viewgraphs shall summarize key points/factors identified in the PPM and should be grouped in the same manner as presented in the PPM.

(3) One copy each of the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

(c) *Waiver.* The Assistant Administrator for Procurement may waive the presentation requirement if, on the basis of Headquarters review of the advance information provided under paragraph (b)(2) of this section, it is clear that installation personnel are thoroughly prepared to enter into negotiations.

(d) *Safeguarding prenegotiation material.* Prenegotiation data are very sensitive and should be handled accordingly. Close coordination with Code HS personnel should be maintained to ensure that prenegotiation material is not compromised during transit. Distribution of prenegotiation data shall be made on a need-to-know basis.

1815.808 Price negotiation memorandum.

(a) The NASA contract negotiation memorandum serves as a detailed summary of:

(1) The technical, business, contractual, pricing, and other aspects of the contract negotiated, and

(2) The methodology and rationale used in arriving at the final negotiated agreement.

(b) Normally, the contract negotiation memorandum is a "stand-alone" document. However, when a PPM has been prepared under 1815.807, the subsequent contract negotiation memorandum need explain only:

(1) The differences between the prenegotiation position and the final negotiated settlement, and

(2) The areas identified in FAR 15.808(a).

1815.870 Subcontract price redetermination.

1815.870-1 General.

(a) When subcontracts have been placed on a price-redetermination or fixed-price-incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced that the amount included for subcontracting is reasonable; e.g., when realistic cost or pricing data on subcontract efforts are available.

(b) However, even though the available cost data are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices lower than those predicted in redetermining the prime contract price, other circumstances may require prompt negotiation of the final contract price. In such a case, the contract modification evidencing the revised contract price should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification the clause prescribed at 1815.870-2.

1815.870-2 NASA contract clause.

The contracting officer shall insert the clause at 1852.215-71, Adjustment for Subcontract Price Redetermination, in contract modifications that reflect a repricing of the prime contract when the prime contractor has not established final prices for one or more subcontracts under the contract that are on a price-redetermination or fixed-price incentive basis.

1815.871 Procedures for identifying contractor's unallowable costs.

(a) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and FAR 31.201-6, will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor because of size, mix of business, or complexity of organization. Some of the advantages of sound procedures are that—

(1) A greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings, and claims;

(2) They expedite the negotiation process; and

(3) They may reduce the scope of reviews performed by audit and other technical and procurement personnel.

(b) The responsible Federal contract audit organization shall review the contractor's procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant administrative contracting officer and, as appropriate, to contracting officers having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices, and techniques for—

(1) Assignment of responsibilities within the organization for reviewing and approving claims against the Government;

(2) Identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable, or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(3) Identification and computation of directly associated costs;

(4) Assurance that unallowable and directly associated costs are not included in estimated costs proposed or in incurred amounts claimed by the contractor;

(5) Coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and

(6) Assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

1815.872 Tracking and resolution of expenditure and system audit findings.

(a) This section implements OMB Circular No. A-50. Expenditure and system audit recommendations shall be resolved by formal review and approval procedures analogous to those at 1815.807-71 and 1815.807-72.

(b) On expenditure or system audits where a major disagreement exists between the contracting officer and the auditor that, in the opinion of the procurement officer, has a significant impact on the action involved, the planned resolution will be coordinated with NASA Headquarters, Code HC, before final action.

(c) (1) The contract audit follow-up system will track all audit recommendations arising out of expenditure and system audits when NASA has cognizant determination authority. Included will be audits involving actions such as contract incurred costs, indirect cost settlements, termination settlements, defective pricing, final pricing or contract close-out, estimating systems surveys, accounting system and internal control reviews, CAS noncompliance reports, and operations audits.

(2) The objective of the tracking system is to ensure that audit recommendations will be resolved as expeditiously as possible, but at a maximum, within six months of the date of the audit report. All audit recommendations involving questioned costs in the categories specified in paragraph (c)(1) of this section shall be tracked. (Audit recommendations involving the placement of contracts shall not be included in the tracking system.)

(d) Identification and tracking of expenditure and system audits under NASA cognizance shall be accomplished in cooperation with DCAA by means of the Contract Audit Follow-up Summary Sheet. The original form shall be attached to the original audit report and sent to the contracting officer having negotiation or resolution responsibility. The second, and only other copy, shall be sent to the NASA Headquarters focal point (Code HC). The summary sheet will identify the total costs questioned or considered avoidable and whether the audit recommendations, in the opinion of the auditor, are significant. The form also identifies the responsible contracting officer and provides a space to be completed by the contracting officer, upon resolution of the matter, with a statement describing how the audit recommendation was resolved, including, when appropriate, dollar values.

(e) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel.

Subpart 1815.9—Profit

1815.902 Policy.

As authorized by FAR 15.902, NASA has established a structured approach for determining profit or fee objectives. This approach, described in 1815.970, is based on the profit-analysis factors appearing in FAR 15.905 and shall be used to determine profit or fee objectives for conducting negotiations in those acquisitions that require cost analysis, except in the case of:

(a) Architect-engineer contracts;

(b) Management contracts for operation and/or maintenance of Government facilities;

(c) Construction contracts;

(d) Contracts primarily requiring delivery of material supplied by subcontractors;

(e) Termination settlements;

(f) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement); and

(g) Contracts having unusual pricing situations when the structured approach is determined unsuitable and the exemption is:

(1) Justified in writing, and

(2) Authorized by the procurement officer.

1815.903 Contracting officer responsibilities.

1815.903-70 Contracting officer authority for negotiating architect-engineer fees.

It is NASA policy that if a contract involving architect-engineer services covers any services other than the production and delivery of designs, plans, drawings, and specifications, the part of the contract price for these other services is not subject to the 6 percent fee limitation set forth in FAR 15.903(d)(1).

1815.970 NASA structured approach for profit or fee objective.

(a) The factors in 1815.970-1 through 1815.970-3 shall be considered in all cases in which profit is to be specifically negotiated. The weight ranges listed after each factor on NASA Form 634, Structured Approach Profit/Fee Objective, shall be used whenever the structured approach is used.

(b) The contracting officer shall first measure Contractor Effort by assigning a profit percentage, within the designated weight ranges, to each element of contract cost recognized by the contracting officer. The amount calculated for the cost of money for facilities capital is not to be included in the computation of profit as part of the cost base.

(c) The suggested categories under Contractor Effort are for reference purposes only. Often individual proposals will be in a different format; but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(d) After computing a total dollar profit for Contractor Effort, the contracting officer shall calculate the specific profit dollars assigned for cost risk, investment, performance, socioeconomic programs, inventive developmental contributions, and additional factors. This is accomplished by multiplying the total government cost objective, exclusive of any cost of money for facilities capital, by the specific weight assigned to the elements within the Other Factors category. NASA Form 634 should be used, as appropriate, to facilitate calculation of this profit objective (calculating Inventive and Developmental Contributions and Unusual Pricing Agreements and combining them under Special Situations).

(e) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors and the considerations for evaluating them as set forth in 1815.970-1, 1815.970-2, and 1815.970-3.

(f) The structured approach was designed for arriving at profit or fee objectives for commercial organizations (FAR subpart 31.2). However, if appropriate adjustments are made, the structured approach can be used as a basis for arriving at fee objectives for nonprofit organizations (FAR subpart 31.7), excluding educational institutions (FAR subpart 31.3). It is NASA policy not to pay profit or fee on contracts with educational institutions. Therefore, the structured approach, as modified in paragraph (f)(2) of this section, shall be used for nonprofit organizations. The modifications should not be applied as deductions against historical fee levels, but rather to the fee objective for commercial organizations as calculated under the structured approach.

(1) For purposes of this paragraph (f), nonprofit organizations are defined as those business entities that are:

(i) Organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and

(ii) Are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations under which fees are involved, an adjustment of up to 3 percent shall be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider—

(i) Tax position benefits;

(ii) Granting of financing through letters of credit;

(iii) Facility requirements of the nonprofit organization; and

(iv) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

1815.970-1 Common factors.

(a) *Contractor effort.* This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements efficiently. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and materials into the final product called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. A major consideration, particularly in experimental, developmental, or research work, is the difficulty or complexity of the work to be performed, and the unusual demands of the contract, such as whether the project involves a new approach unrelated to existing equipment or only refinements of existing equipment. Evaluation of this factor requires analyzing the cost content of the proposed contract as follows:

(1) *Material acquisition (subcontracted items, purchased parts, and other material).* (i) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials, including special tooling. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for example, obtain the material and tooling by routine orders from readily available supplies (particularly those of substantial value in relation to the total contract cost), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements.

(ii) Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out subcontracts from sole sources through the introduction of competition. These determinations should be made for purchases of raw materials or basic commodities; purchases of processed material, including all types of components of standard or near-standard characteristics; and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In the application of the criterion, it should be recognized that the contractor's purchasing program might make a substantial contribution to the performance of the contract. This might be applicable in the management of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative.

(iii) Recognized costs proposed as direct material costs, such as scrap charges, shall be treated as material for profit evaluation. If intracompany transfers are accepted at price in accordance with FAR 31.205-26(e), they shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(2) *Direct labor (engineering, service, manufacturing, and other labor).* (i) Analysis of the various items of the cost content of the contract should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack of diversity, of scientific and engineering specialties required for contract performance, and the corresponding need for engineering supervision and coordination, should be evaluated. Such circumstances as whether the caliber or class of engineer involved is that of an "idea-man"—or whether the contractor is required by the contract to assign to the work, because of its nature, unusually skilled talent—should be considered as part of the evaluation.

(ii) Service contract labor should be evaluated in a like manner by assigning higher weights to engineering or professional skills and lower weights to semiprofessional or other skills required for contract performance.

(iii) Similarly, the variety of manufacturing and other categories of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, categories of labor (i.e., quality control, receiving and inspecting, etc.) not falling within the definition for engineering, service, or manufacturing labor may be categorized appropriately. However, the same evaluation considerations as outlined above will be applied.

(3) *Overhead and general management (G&A).* (i) Analysis of these overhead items of cost includes the evaluation of the makeup of these expenses and how much they contribute to contract performance. To the extent practicable, the analysis should include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered direct labor under the contract. The allocable labor elements should be given the same profit consideration they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses such as utilities and maintenance, and hence given lesser profit consideration, or are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole.

(ii) It is not necessary that the contractor's accounting system break down overhead expenses within the classification of engineering overhead, manufacturing overhead, other overhead pools, and general and administrative expenses (G&A), unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system reflects only one overhead rate on all direct labor need not change its system (if CAS-exempt) to correspond with the above classifications. The contracting officer, in an evaluation of such a contractor's overhead rate, could break out the applicable sections of the composite rate, which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and follow the appropriate evaluation technique.

(iii) Management problems surface in various degrees, and the management expertise exercised to solve them should be considered as an element of profit. For example, a new program for an item on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than will a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward, since many of the problems should have been solved. In any event, an evaluation of the underlying managerial effort involved should be made on a case-by-case basis.

(iv) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses in connection with each procurement action for substantially the same product with the same contractor. If an analysis of the profit weight to be assigned to the overhead pool has been made, that weight assigned may be used for future procurements with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or the factors discussed in paragraph (a)(3)(iii) of this section are involved.

(4) *Other costs.* Include all other direct costs associated with contractor performance under this item (e.g., travel and relocation, direct support, and consultants). Analysis of these items of cost should include

(i) The significance of the costs to contract performance,

(ii) Their nature, and

(iii) How much they contribute to contract performance.

(b) *Contract cost risk.* The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement or price-redetermination provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit or fee should be less than for arrangements under which the contractor assumes all the risk. In developing the prenegotiation profit objective, the contracting officer will need to consider the type of contract anticipated to be negotiated and the contractor risk associated with it when selecting the position in the weight range for profit appropriate for the risk to be borne by the contractor. This factor is one of the most important in arriving at prenegotiation profit objectives.

(1) Evaluation of this risk requires a determination of:

(i) The degree of cost responsibility the contractor assumes,

(ii) The reliability of the cost estimates in relation to the task assumed, and

(iii) The complexity of the task assumed by the contractor.

This factor is specifically limited to the risk of contract costs. Thus, risks on the part of the contractor such as reputation, losing a commercial market, or losing potential profits in other fields, or any risk on the part of the contracting office such as the risk of not acquiring an effective space vehicle, are not within the scope of this factor.

(2) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring the contractor to use its best efforts to perform a task and a firm fixed-price contract for a complex item. A cost-plus-fixed-fee contract reflects a minimum assumption of cost responsibility, while a firm-fixed-price contract reflects a complete assumption of cost responsibility. When the proper contract type has been selected, the regard for risk by contract type would usually fall within the 0-to-3-percent range for cost-reimbursement contracts and 3 to 7 percent for fixed-price contracts.

(3) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior experience assists the contractor in preparing reliable cost estimates on new procurements for similar equipment. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby re-

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ducing the contractor's assumption of contract cost risk.

(4) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of contract type.

(i) Within the ranges set forth in paragraph (b)(2) of this section, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to 0.5 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the range, with weightings directly related to such factors as confidence in target cost, share ratio of fees, etc.

(ii) The range for fixed-price contracts is wide enough to accommodate the various types of fixed-price arrangements. These include fixed-price incentive, firm-fixed-price with economic price adjustment, fixed-price with prospective or retroactive price redetermination, and firm-fixed-price contracts. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with requirements for prototypes or hardware reaching the top end of the range.

(iii) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It could cause risk to increase or decrease in terms of both cost and performance. This consideration should be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor, and the contract cost risk evaluation may, as a result, be below the range that would otherwise apply for the contract type proposed. The contract cost risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of the contractor's risk.

(iv) In making a contract cost risk evaluation in a procurement action that involves definitization of a letter contract, unpriced change orders, or unpriced orders under BOAs, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk is substantially unchanged. To be equitable, determination of a profit weight for application to the total of all recognized costs, both incurred and yet to be expended, must be made with consideration of all attendant circumstances and should not just be based on the portion of costs incurred, or percentage of work completed, before definitization.

(v) Time-and-materials and labor-hour contracts shall be considered cost-plus-fixed-fee contracts for the purpose of establishing profit weights, unless otherwise exempt under 1815.902, in evaluating the contractor's assumption of contract cost risk.

(c) *Investment.* NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. Evaluation of this factor should include an analysis of the following:

(1) *Facilities.* (i) To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute to lower total contract costs should be provided additional profit. On the other hand, contractors that rely on the Government to provide or finance needed facilities should receive a corresponding reduction in profit. Cases between the above examples should be evaluated on their merits, with either a positive or negative adjustment, as appropriate, in the profit objective. However, where a highly facilitized contractor is to per-

form a contract that does not benefit from this facilitization, or when a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted.

(2) *Payments.* In analyzing this factor, consideration should be given to the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly, with additional consideration being given for a capital turnover rate on the contract that is less than the contractor's or the industry's normal capital turnover rate.

(d) *Contractor's performance.* The contractor's past and present performance should be evaluated in such areas as product quality, meeting performance schedules, efficiency in cost control (including the need for and reasonableness of costs incurred), accura- y and reliability of previous cost estimates, degree of cooperation by the ontractor (both business and techni- al), timely processing of changes and ompliance with other contractual rovisions, and subcontract program anagement. If a contractor has constently achieved excellent results in ese areas in comparison with other ntractors in similar circumstances, ch performance merits a proportionely greater opportunity for profit or . Conversely, a poor record in this ard should be reflected in determining what constitutes a fair and reaable profit or fee.

e) *Federal socioeconomic programs.* s factor, which may apply to spe- circumstances or particular acquions, relates to the extent of the tractor's successful participation in ernment-sponsored programs such mall business, small disadvantaged ness, and labor surplus area prons and energy conservation efforts. tractor policies and procedures h energetically supporting Govnent socioeconomic programs and achieving success should be given positive consideration. Conversely, failure or unwillingness on the part of the contractor to support Government socioeconomic programs should be viewed as evidence of poor performance for the purpose of establishing this part of the profit objective.

(f) *Inventive and developmental contributions.* (1) The extent and nature of contractor-initiated and -financed independent development should be considered in developing the profit objective. The importance of the development in furthering space and aeronautical purposes, the demonstrable initiative in determining the need for and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources should be weighed.

(2) This factor need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract (e.g., products with commercial application).

1815.970-2 Additional factors—unusual pricing agreements.

Occasionally, unusual contract pricing arrangements are made with the contractor under which it agrees to participate in the sharing of contract cost or agrees to accept a lower profit or fee for changes or modifications within a prescribed dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit objective.

1815.970-3 Facilities capital cost of money.

When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed in accordance with FAR 31.205-10(a) (see FAR 15.904 and 52.215-30 for related contract clause).

1815.971 Payment of profit or fee under letter contracts.

It is NASA policy to pay profit or fee on definitized contracts only.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.1003 Debriefing of unsuccessful offerors.

1815.1003-1 Scope of subpart.

This subpart sets forth NASA policy and procedures for debriefing unsuccessful offerors in all competitive negotiated procurements. (See also, paragraph 504 of 1870.103, App. I, for debriefing procedures applicable to Announcements of Opportunity.)

1815.1003-2 Policy.

(a) NASA shall debrief an unsuccessful competitor in accordance with FAR 15.1003. It is essential that debriefings be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the proposer be absolutely factual and consistent with—

(1) The findings of the Source Evaluation Board (SEB) and the basis on which the Selection Official made the decision; or

(2) The findings of the technical and contracting officers and the basis on which the contracting officer made the decision if SEB procedures were not employed.

(b) Unless authorized by the Assistant Administrator for Procurement, the Source Selection Statement for alternative system design concepts under the Major System Acquisitions process is not to be released to competing offerors or the general public until the release of the Source Selection Statements for full-scale development.

1815.1003-3 Designated Officials.

Debriefings are to be conducted by senior NASA officials. When the selection has been made by the Administrator, the Administrator will designate an official familiar with the rationale for the selection to conduct the debriefings, with participation by cognizant field installation personnel, if deemed necessary. When the selection has been made by the Field Installation Director or a Headquarters Staff or Program Office head, the Center Director or Official-in-Charge of the Headquarters office shall designate an official and necessary supporting staff to perform the debriefing. When SEB procedures were not applied, the installation Procurement Officer, or designee, shall perform the debriefing.

1815.1003-4 Procedures.

(a) The recipient of a written or oral debriefing request shall immediately refer the request to the installation procurement officer.

(b) The procurement officer, upon receipt of a debriefing request, shall inform the designated official and other concerned officials at the installation and, in the case of procurement actions where an Associate Administrator or the Administrator was the Selection Official, the cognizant NASA Headquarters personnel.

(c) If an unsuccessful offeror in a negotiated procurement submits, prior to the award of the contract, a written request for a debriefing, such a debriefing will be provided at the earliest feasible time. This normally shall be after announcement of the selection decision and prior to award of the contract. ("Selection decision" means the final selection of the one successful contractor, or the contractors where more than one contract is to be awarded). If the selection decision involves more than one contractor pursuant to the Major System Acquisition process, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful contractor(s) that would result in a transfusion of ideas which also could inhibit contractors during the early phase from offering their best and most promising ideas for meeting the mission need. However, when the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefings may be conducted after award.

(d) A summary of the results of each debriefing, signed by the conducting

NASA official, shall be placed in the contract file.

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

Sec.
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Subpart 1816.3—Cost-Reimbursement Contracts

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Subpart 1816.4—Incentive Contracts

1816.403 Fixed-price incentive contracts.
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Subpart 1816.5—Indefinite-Delivery Contracts

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Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.
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1816.603-71 Authority to approve the issuance of a letter contract.

Subpart 1816.7—Agreements

1816.703 Basic ordering agreements.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28254, July 5, 1989, unless otherwise noted.

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216-78, Firm Fixed Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203 Fixed-price contracts with economic price adjustment.

1816.203-4 Contract clauses.

(a) The contracting officer shall coordinate with the installation's Financial Management Officer before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216-2, 52.216-3, and 52.216-4.

(b) The contracting officer may modify the clause at FAR 52.216-4 for use in sealed-bid procurements.

(c) This paragraph (c) applies to adjustments based on cost indexes of labor or material.

(1) All price adjustment clauses using cost indexes require advance approval by the Assistant Administrator for Procurement. Requests for approval shall be submitted to the Office of Procurement, NASA Headquarters (Code HC).

(2) The factors in paragraphs (c)(2) (i) through (xiii) of this section, should be considered in preparing any price adjustment clause in situations meeting the criteria of FAR 16.203-4(d):

(i) The clause should not be overly complex.

(ii) The clause normally should not provide either a ceiling or a floor for adjustment unless adjustment is based on an index below the four-digit level of the Bureau of Labor Statistics Producer Price Index or the Wage and Income Series by Standard Industrial Classification (Labor).

(iii) The clause normally should cover all potential economic fluctuations within the original contract period of performance.

(iv)(A) The clause must positively and accurately identify the index(es) upon which adjustments will be based and must provide an alternative in the event publication of the designated index is discontinued. The alternative might include the substitution of another index, if the time remaining would justify it and an appropriate index is reasonably available, or some other method for repricing the remaining portion of the work.

(B) There should normally be no need to make an adjustment if computation of the identified index is altered; however, provision may be made to adjust the economic fluctuation computations if the method of computing the index is so substantially altered as to negate the original intent of the parties. When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the price adjustment clause shall further specify that any adjustment shall be based upon the applicable revised index.

(v) An index should be structured to encompass a large sample of relevant items, yet bear a logical relationship to the type of contract costs measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance. But it must be broad enough to ensure that the effect created by any single company, including the anticipated contractors, is minimal.

(vi) Not more than two indexes normally should be used; i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(vii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made, as a reference point for applying an index.

(viii) The clause should provide for adjustment from the beginning of the contract or for such period that the rate of expenditure is commensurate with the administrative cost and effort of adjusting, but it should not provide for adjustment beyond the original contract performance period.

(ix) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor use as related to total contract price) in lieu of actual cost incurred. If the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix and percentage rate of expenditure, shall be determined by the contracting officer in a manner approximating, as nearly as possible, the average-expenditure profile of all companies likely to make offers. If the clause is to be used in a noncompetitive procurement, the labor and material allocations determined by the contracting officer may be subject to negotiation and agreement.

(x)(A) The clause should state the percentage of the contract price subject to adjustment. Normally, adjustments are not applied to the profit portion of the contract.

(B) Additionally, the labor and material portions of the contract must be examined to exclude areas not requiring adjustment. It may not be necessary, for example, to include all subcontracting, because some of the subcontracting could be for short periods during the early life of the contract. It may be possible to exclude certain areas of overhead from escalation protection; e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges. Consideration also should be given to including economic-fluctuation protection covering that portion of labor for the period for which a definitive union agreement exists without additional factoring for such things as cost-of-living increases.

(C) Care should be taken to allocate to labor and material only those costs likely to be affected by fluctuations in the economy. That portion of the contract determined to be proper for economic-fluctuation protection shall then be allocated to specific periods (e.g., quarterly, semiannually) on the basis of the most probable expenditure or commitment (expenditure profile).

(xi) The clause should provide for definite times or positive events for price adjustments. Adjustments should be of a frequency affording the contractor appropriate economic relief without creating a burdensome administrative effort. The adjustment period should normally range from a minimum of quarterly to a maximum of annually.

(xii) When the contract contains cost incentives, any sums paid to the contractor because of economic price adjustments shall be subtracted from the total of the contractor's allowable cost for the purpose of establishing the total costs to which the cost incentives apply. If the incentive arrangement is cited in percentage ranges rather than dollar ranges above and below target costs, the economic price adjustment clause should be structured to maintain the original contract incentive range in dollars.

(xiii) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and are not modified unless the contract is partially terminated. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provision for economic price adjustment.

(d) Consistent with the factors in paragraph (c)(2) of this section, and to allocate risk properly, the contracting officer may provide for certain economic price adjustment arrangements between the prime contractor and subcontractors. In such circumstances, a requirement to incorporate price adjustment clauses in specified subcontracts should be included in the prime contract's price adjustment clause.

(e) When economic price adjustment clauses are included in contracts that do not require submission of cost or pricing data (see FAR 15.804-2 and 15.804-3), the contracting officer shall obtain adequate information to establish the baseline from which adjustments will be made. In addition, the contracting officer may require verification of this information to the extent necessary to permit reliance upon it as a reasonable baseline.

(f) The contracting officer shall insert the provision at 1852.216-72, Evaluation of Offers Subject to Economic Price Adjustment, in all solicitations and contracts that contain an economic price adjustment clause.

1816.207 Firm-fixed-price, level-of-effort term contracts.

1816.207-70 NASA contract clause.

(a) The contracting officer shall insert a clause substantially as stated at 1852.216-79, Level-of-Effort (Fixed-Price), in fixed-price term solicitations and contracts. Insert the minimum direct labor hours, the labor categories and associated direct labor hours, and a formula or dollar amount as the rate(s) at which the fixed price may be reduced if the minimum direct labor hours have not been provided. If it is in the Government's interest, the labor category information may be simplified (e.g., "engineering" or "drafting") for smaller, less complex procurements.

(b) For task ordering procedures for firm-fixed-price, level-of-effort term contracts, see 1816.307-70(d) and (e).

Subpart 1816.3—Cost-Reimbursement Contracts

1816.301 General.

1816.301-3 Limitations.

(a) The determination and findings required by FAR 16.301-3 may be signed by the contracting officer for individual purchases and contracts. The format below shall be used as shown.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority to Use a (a) Contract

Upon the basis of the following findings and determination, which I make under the authority of 10 U.S.C. 2306(c), the contract described below may be entered into on a (a) basis.

Findings

1. The (b) proposes to enter into a (a) contract for the acquisition of (c). The cost of this work is estimated at $______.

2. The work to be performed is (d).

Determination

1. (This contract type is likely to be less costly than any other type.) (It is impractical to obtain supplies or services of the kind or quality required without the use of this contract type.) (e)

2. The estimated cost of the proposed contract is $ (f) .

Date:__________

NOTES: The contracting officer shall insert, where shown, the following information:

(a) Type of contract contemplated.

(b) Installation name.

(c) Brief description of supplies or services.

(d) Description of the nature of the proposed work and related specific facts that show why the contemplated contract type is the best alternative for this particular acquisition.

(e) The appropriate alternative or, when both apply, insert both connected by "and."

(f) Required only for cost-plus-fixed-fee contracts.

1816.303 Cost-sharing contracts.

The following guidelines apply to research contracts resulting from unsolicited proposals, and to supplements to such contracts that require additional funding.

(a) *When cost sharing is applicable.* (1) Except as provided in paragraph (b) of this section, cost sharing by non-Federal organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal.

(2) Cost sharing by non-Federal organizations in any contract may be accepted when offered by a performing organization.

(b) *When cost sharing is not applicable.* (1) Cost sharing is not applicable to contracts for basic or applied research resulting from an unsolicited proposal when:

(i) The offeror certifies in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research, and no means of recovering any cost sharing on such projects, and

(ii) The contracting officer determines that cost sharing does not apply.

In these situations, when there is no measurable potential gain to the performing organization, there is no mutuality of interest, and it would not be equitable for the Government to require cost sharing.

(2) (i) The activities of educational institutions under NASA sponsorship normally are of benefit only to NASA and would not justify cost sharing; i.e., NASA's normal policy of reimbursing universities fully for research performed on its behalf would apply. However, to establish on a case-by-case basis that there is no clear potential for significant future benefit or measurable gain, and that cost sharing does not apply, the contracting officer shall document the file with a determination substantively the same as that required by paragraph (b)(1) of this section. The determination shall identify the information on which it is based. If the determination cannot reasonably be made from the available information, the contracting officer shall request the offeror to certify as in paragraph (b)(1) of this section. Blanket procedures shall not be established for obtaining certifications from offerors for all cases on a routine basis.

(ii) Cost sharing by educational institutions may nevertheless be accepted when voluntarily offered, if the institution is aware of NASA's policy that the amount of cost sharing is not a factor in determining whether to support a given proposal.

(c) *Amount of cost sharing*—(1) *Educational institutions and affiliated not-for-profit institutions.* (i) Cost sharing, if used for educational institutions and affiliated not-for-profit institutions, normally varies from one percent to as much as five percent of the project's cost.

(ii) NASA does not request inclusion of cost-sharing information in proposals from educational institutions. If cost sharing is determined applicable, a cost-sharing offer will be requested during negotiations.

(2) *Other performing organizations.* (i) Cost sharing for organizations other than those in paragraph (c)(1) of this section may be any percentage of the research cost. Mutuality of interest in the results of the work being performed is of primary significance in assessing the appropriateness of any particular level of cost sharing.

(ii) Factors that should be considered in determining mutuality of interest include—

(A) The potential of the contractor to recover its contribution from non-Federal sources;

(B) The extent to which the particular area of research requires special stimulus in the national interest; and

(C) The extent to which a research effort or result is likely to enhance the contractor's capability, expertise, or competitive position.

(d) *Implementation*—(1) *Payment of fee or profit.* No fee or profit may be paid to a cost-sharing contractor, and only an agreed portion of allowable costs shall be reimbursed.

(2) *Method of cost sharing.* Cost sharing shall be accomplished by a contribution of part or all of one or more elements of the allowable cost of the work being performed. It normally shall be expressed as a stated minimum percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(3) *Documentation.* Contract files shall contain appropriate documentation of the reasons for cost sharing and support for the amount of cost sharing agreed upon. For educational institutions, the reasons for any cost sharing exceeding:

(i) Five percent or

(ii) The amount originally offered shall be documented.

1816.307 Contract clauses.

(a) In solicitations and contracts containing the clause at FAR 52.216-8, Fixed Fee, or FAR 52.216-10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(b) In subdivision (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216-7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215-1, Examination of Records by Comptroller General.

(c) In subdivision (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216-13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215-1, Examination of Records by Comptroller General.

1816.307-70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216-73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303.

(b) The contracting officer may insert the clause at 1852.216-74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(c) The contracting officer may insert the clause at 1852.216-75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert a clause substantially as stated at 1852.216-80, Task Ordering Procedure, for level-of-effort term solicitations and contracts where:

(1) The Government desires to control and direct the contractual effort through the issuance of task orders and

(2) The statement of work is conducive to issuance of task orders by the Government.

This clause is applicable to both fixed-price and cost type term contracts. The contracting officer may modify, where appropriate, the contractor's task plan submission period.

(e) The contracting officer shall use the clause at 1852.216-80 with its Alternate I, which deletes the requirement for contractor task plans, if:

(1) Direction in the task order is sufficiently defined,

(2) Submission of a contractor task plan would serve no useful purpose in clarifying the work to be performed,

(3) The task order authorizes commencement of work on a particular date, and

(4) The contractor acknowledges in writing that it will proceed with work in accordance with the task order.

(f) The contracting officer shall insert the clause at 1852.216-81, Estimated Cost, in cost no-fee contracts that are not cost sharing or facilities contracts. Insert the total estimated cost (value) of the contract.

(g) The contracting officer shall insert a clause substantially as stated at 1852.216-82, Level-of-Effort (Cost), in cost-plus-fixed-fee term solicitations and contracts. Insert the minimum and maximum percentages of direct labor hours, the labor categories and associated direct labor hours, and total direct labor hours. If it is in the Government's interest, the labor category information may be simplified (e.g., "engineering" or "drafting") for smaller, less complex procurements.

(h) The contracting officer may insert a clause substantially as stated at 1852.232-87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts. Insert the contract number and mailing addresses for submission of vouchers.

1816.370 Forms.

Contractors shall use NASA Form 778, Contractor's Release; NASA Form 779, Assignee's Release; NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts, to fulfill the assignment and release requirements of the clauses prescribed at FAR 16.307 (a) and (g) (i.e., the clause at FAR 52.216-7, Allowable Cost and Payment, and FAR 52.216-13, Allowable Cost and Payment—Facilities).

Subpart 1816.4—Incentive Contracts

1816.403 Fixed-price incentive contracts.

The determination and findings required by FAR 16.403(c) may be signed by the contracting officer for individual purchases and contracts.

1816.404 Cost-reimbursement incentive contracts.

1816.404-2 Cost-plus-award-fee contracts.

To assure compliance with FAR 16.404-2(b)(2), all contract performance areas subject to evaluation on a judgmental basis, including performance areas such as cost and technical management, quality, timeliness, and productivity, shall be consolidated in a single award fee criteria and rating plan. The objective is a balanced evaluation of the contractor's overall performance, resulting in a single award fee determination consistent with NASA's management concerns and priorities in the particular situation.

1816.405 Contract clauses.

1816.405-70 NASA contract clauses.

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216-76, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The contracting officer may insert a clause substantially as stated at 1852.216-83, Fixed Price Incentive, in fixed price incentive solicitations and contracts utilizing firm or successive targets. See FAR 52.216-16 and 52.216-17. Insert the appropriate amounts. For items to be subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(c) The contracting officer shall insert the clause at 1852.216-84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts. Insert the appropriate target cost and fee amounts.

(d) The contracting officer may insert a clause substantially as stated at 1852.216-85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts. Insert the applicable cost and fee information for the particular procurement. If there is no base fee, delete the statements regarding base fee or specify $"0" (zero) base fee.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.506 Ordering.

If the contracting office retains all contract administration functions, orders may be placed by written telecommunication.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.603-4 Contract clause.

1816.603-470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.216-86, Settlement of Letter Contract, in contracts definitizing letter contracts. Insert the appropriate letter contract number, date, and modification numbers.

1816.603-70 Information to include in a letter contract.

Although there is no set format for a letter contract, certain items must be addressed either in the letter portion of the letter contract or in an attachment to it. The following listing of items, not intended to be all-inclusive, applies to letter contracts:

(a) Contracting officer's signature.

(b) Provision for written acceptance by the contractor.

(c) Statement of work.

(d) Provision for delivery or performance schedule and place(s) of inspection and acceptance.

(e) Maximum dollar amount of Government liability and a statement that expenditure or obligation in excess of that amount shall be at the contractor's own risk.

(f) The target date for negotiation and execution of a definitive contract and a statement of the type of contract contemplated.

(g) A statement that no profit or fee shall be paid under the letter contract except as provided in the Termination clause (see 1815.971).

1816.603-71 Authority to approve the issuance of a letter contract.

(a) Letter contracts having an estimated definitive contract amount below the dollar thresholds specified in 1807.7102.

(1) Authority to approve the issuance of such letter contracts is delegated to the procurement officers. The request for approval shall include the following:

(i) Proposed contractor's name and address.

(ii) Location where contract is to be performed.

(iii) Contract number, including modification number, if applicable.

(iv) Brief description of the work or services to be performed.

(v) Performance period or delivery schedule.

(vi) Amount of letter contract.

(vii) Performance period of letter contract.

(viii) Estimated total amount of definitive contract.

(ix) Type of definitive contract to be executed; e.g., fixed-price, cost-plus-award-fee.

(x) A statement that the definitive contract will contain all required clauses or that deviations have been approved.

(xi) A statement as to the necessity and advantage to the Government of the proposed letter contract.

(2) The procurement officer shall provide a copy of the approval to issue a letter contract, along with the documentation required in paragraph (a)(1) of this section, to the Assistant Administrator for Procurement (Code HS) within 10 days of approval.

(3) The procurement officer shall notify the Assistant Administrator for Procurement (Code HS) of the date of definition and contract amount.

(b) Letter contracts having an estimated definitive contract amount equal to or exceeding the dollar thresholds specified in 1807.7102.

(1) Requests for authority to issue such letter contracts shall be signed by the procurement officer and submitted to the Assistant Administrator for Procurement (Code HS). They shall include the information cited in paragraph (a)(1) of this section.

(2) Any modification made, prior to definitization, to a letter contract approved by the Assistant Administrator for Procurement must be approved by the Assistant Administrator for Procurement. When a letter contract was approved by the procurement officer, any modification made to it before definitization that increases the estimated definitized contract amount to or above the dollar thresholds specified in 1807.7102 must have the prior approval of the Assistant Administrator for Procurement.

(3) Promptly upon receipt of a request to issue a letter contract, the Assistant Administrator for Procurement shall obtain the concurrence or comments of cognizant officials in charge of Headquarters offices and then advise the procurement officer of the disposition of the request.

Subpart 1816.7—Agreements

1816.703 Basic ordering agreements.

Orders under a basic ordering agreement may be issued on Optional Forms 347 and 348 or on an installation-prescribed form.

PART 1817—SPECIAL CONTRACTING METHODS

Subpart 1817.1—Multiyear Contracting

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1817.102 Policy.
1817.103 Procedures.
1817.103-1 General.

Subpart 1817.2—Options

1817.200 Scope of subpart.
1817.203 Solicitations.
1817.204 Contracts.
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1817.207 Exercise of options.
1817.208 Solicitation provisions and contract clauses.

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1817.7000 Scope of subpart.
1817.7001 Authorization and policy.
1817.7002 NASA-Defense Purchase Request and acceptance.
1817.7002-1 Acceptance by Military Department.
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1817.7002-3 Payments.
1817.7002-4 Contract clause.

Subpart 1817.71—Exchange or Sale of Personal Property

1817.7101 Policy.

AUTHORITY: 42 U.S.C. 2473 (c)(1).

SOURCE: 54 FR 28258, July 5, 1989, unless otherwise noted.

Subpart 1817.1—Multiyear Contracting

1817.102 Policy.

Multiyear contracting is generally not appropriate for use by NASA, because of the nature of NASA's appropriations and agency mission. Therefore, contracting officers may not issue a multiyear solicitation without first obtaining written approval from the Assistant Administrator for Procurement, NASA Headquarters, Code HS.

1817.103 Procedures.

1817.103-1 General.

Under 10 U.S.C. 2306(g), multiyear contracting with funds that would otherwise be available for obligation only within the fiscal year for which appropriated is permitted for periods of not more than five years for certain types of services. For these services, in addition to the approval required by 1817.102 above, 10 U.S.C. 2306(g) and 2310 require a written determination and findings:

(a) By the Administrator for contracts exceeding three years, and

(b) By the contracting officer for individual contracts not exceeding three years.

Subpart 1817.2—Options

1817.200 Scope of subpart.

As authorized at FAR 17.200, FAR subpart 17.2 shall apply to all NASA contracts, unless otherwise stated at 1817.204(a).

[54 FR 53631, Dec. 29, 1989]

1817.203 Solicitations.

The "authorized person" mentioned in FAR 17.203(g)(2) is hereby designated as being the Procurement Officer.

1817.204 Contracts.

(a) The 5-year limitation (basic plus option periods) set forth in FAR 17.204(e) shall apply to all NASA contracts regardless of type, except contracts for automatic data processing (ADP) equipment systems and related software development, maintenance, and services; and contracts for telecommunications equipment and services. In addition to these exclusions, the 5-year limitation is not applicable to contracts for which the time needed to design, manufacture, and deliver the end item of hardware is greater than five years. Deviations from the 5-year limitation policy require that:

(1) The extended years can be reasonably priced, and

(2) A persuasive case (other than resources problems) can be made for exceeding five years.

(EXAMPLE: Some specific program event will occur at or near the end of the total contract period and a competition and potential change of contractor would be unacceptably disruptive or inefficient, or some other programmatic considerations dictate a longer period.)

(b) In addition to establishing either a fixed or maximum fee or a formula for determining the fixed or maximum fee, options under cost type contracts shall contain an estimated cost for the option period(s).

[54 FR 28258, July 5, 1989, as amended at 54 FR 53631, Dec. 29, 1989]

1817.206 Evaluation.

For the purpose of FAR 17.206(b), the procurement officer at each center shall be the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

1817.207 Exercise of options.

(a) Unless a determination has been approved under FAR 17.206(b), the selection statement for each procurement involving an option shall include the source selection official's consideration of the option as part of the initial competition.

(b) Use of the provision (or formula) specified in FAR 17.207(f)(2) requires advance approval by the Assistant Administrator for Procurement (Code HC).

(c) For the purposes of FAR 17.207:

(1) In subdivision (f)(3)(i), the term "fixed fee" applies only to cost-plus-fixed-fee (CPFF) contracts and the term "maximum fee" applies to cost-plus-award-fee (CPAF) and cost-plus-incentive-fee (CPIF) contracts.

(2) When using a formula pursuant to subdivision (c)(3)(ii), the formula shall be expressed in the contract in a way that precludes the contractor from increasing costs for the purpose of earning additional fee. Use of a formula requires advance approval of the Assistant Administrator for Procurement. (Code HC).

1817.208 Solicitation provisions and contract clauses.

For the purpose of FAR 17.208(c)(3), cost reimbursement types of contracts are approved for agency use.

Subpart 1817.4—Leader Company Contracting

1817.401 General.

It is NASA policy not to use the leader company contracting technique.

Subpart 1817.5—Interagency Acquisitions Under the Economy Act

1817.504 Ordering procedures.

(a) It is NASA's policy not to place Government agencies in direct competition with commercial sources. Before offers are solicited from commercial sources, the field installation's Director or a designee (see NMI 5101.24, Delegation of Authority to Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters) must determine whether to obtain the supplies or services from other Government agencies. Invitations for bids and requests for proposals shall not be sent to Government agencies. Current market prices, recent procurement prices, or prices obtained by informational submissions as provided in FAR 15.405 may be used to ascertain whether procurement can be effected more economically from commercial sources.

(b) An order for services shall not be placed with an agency when they can be performed as conveniently or more economically by private contractors.

(c) Delivery orders shall be placed on Optional Forms 347 and 348 or an installation-prescribed form. However, when energy services are procured under DOD areawide utility contracts, the method of ordering prescribed in the appropriate DOD areawide contract will be used. The form may be modified to satisfy NASA fiscal and administrative requirements and to contain such additional contract provisions as may be contemplated or permitted by the DOD areawide contract, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034.

Subpart 1817.70—Procurement With Military Departments

1817.7000 Scope of subpart.

This subpart contains policies and procedures, developed jointly by NASA and DOD, for procurement of supplies or services by NASA from or through the Military Departments.

1817.7001 Authorization and policy.

(a) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 *et seq.*) to:

(1) Use the procurement services, personnel, equipment, and facilities of the Military Departments, with their consent and with or without reimbursement, and, on a similar basis, to

(2) Cooperate with the Military Departments in the use of procurement services, equipment, and facilities.

(b) The Military Departments have agreed to cooperate fully with NASA in making their procurement services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to procurements for NASA, except as may be otherwise agreed before the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Departments have agreed to use their own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services or performing services for NASA, and will not cite NASA funds on any Defense obligation or payment document.

1817.7002 NASA-Defense Purchase Request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA contracting offices for requesting procurement of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with subpart 1804.71. The form shall not be used for requesting—

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items that the Military Departments normally purchase and stock for military use or in-house services, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) To obtain materials from the Air Force Missile Procurement Fund, the contracting officer shall follow the procedures of 1808.002-74.

1817.7002-1 Acceptance by Military Department.

(a) Except as provided in paragraph (c) of this section, the Military Department concerned will, within 30 days after receipt of a NASA-Defense Purchase Request, forward to the initiator of the request an Acceptance of MIPR, DD Form 448-2, in quadruplicate. Each DD Form 448-2 will show the action being taken or to be taken to fill the requirement and the name and complete address of the DOD contracting activity.

(b) To the extent feasible, all documents (including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer between Appropriations and/or Funds) billings) will reference the NASA-Defense Purchase Request number and the item number.

(c) Acceptance by the Military Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard-stock items that the supplying agency has on hand or on order for prompt delivery at published prices.

1817.7002-2 Changes in estimated total prices.

When a Military Department determines that the estimated total price (Block 9, NASA Form 523) of the items to be acquired for NASA is not sufficient to cover the required reimbursement or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, the NASA contracting office concerned shall forward to the DOD contracting activity an amendment to the NASA Defense Purchase Request.

1817.7002-3 Payments.

Except when agreements provide that reimbursement is not required, payments to the Military Departments for supplies and services furnished to or acquired for NASA shall be effected upon receipt of Standard Form 1080 billings by the NASA office designated in Block 11 of the NASA-Defense Purchase Request. Billings will be supported in the same manner as billings between Military Departments.

1817.7002-4 Contract clause.

The contracting officer shall insert the clause at 1852.217-70, Property Administration and Reporting, in any NASA-Defense Purchase Request when property will be involved.

Subpart 1817.71—Exchange or Sale of Personal Property

1817.7101 Policy.

(a) Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), authorizes the exchange or sale of Government personal property and the application of the exchange allowance or proceeds from sale to the acquisition of similar property for replacement purposes.

(b) NASA installations and contractors are authorized to conduct exchange/sale transactions as long as the requirements and restrictions of NHB 4300.1 and the Federal Property Management Regulations, Subchapter H, paragraphs 101-46, are followed. In conducting such exchanges/sales, NASA contractors must obtain the contracting officer's prior written approval and must report the transactions to the cognizant NASA Installation Property Disposal Officer (PDO).

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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1819.1005 Applicability.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28260, July 5, 1989, unless otherwise noted.

1819.001 Definitions.

Small Business Specialist means the person who—

(1) Is appointed by the Head of each NASA installation having procurement responsibilities; and

(2) Is the central point of contact for all small business and labor surplus area matters. See 1819.201 (b) and (c) for a detailed description of this position. This person is synonymous with the Small and Disadvantaged Business Utilization Specialist (see FAR 19.201(d)).

Subpart 1819.1—Size Standards

1819.170 Contract provision.

The contracting officer shall insert the provision at 1852.219-72, Standard Industrial Classification (SIC) Code and Small Business Size Standard, in all solicitations. Insert the applicable SIC code and small business size information (either the number of employees, or the dollar value in average annual receipts for the last three (3) fiscal years for the particular procurement).

[54 FR 28260, July 5, 1989, as amended at 54 FR 39371, Sept. 26, 1989]

Subpart 1819.2—Policies

1819.201 General policy.

(a) *NASA Headquarters.* The Director of Small and Disadvantaged Business Utilization (Code K) is responsible for:

(1) The general supervision and coordination of the NASA Small Business Program;

(2) Developing the policy and procedures for implementing the NASA Small Business Program, Minority Business Program, Women Owned Business Program, and Labor Surplus Area Program;

(3) Advising the Administrator and other NASA officials on these matters; and

(4) Representing NASA before other Government agencies and industry on matters related to the programs listed in paragraph (a)(2) of this section.

(b) *Installations.* The Head of each installation having procurement responsibilities shall designate a qualified individual in the contracting office as a Small Business Specialist to provide a central point of contact to which small business concerns may direct inquiries concerning small business matters and participation in the NASA procurement program. The Small Business Specialist shall also perform other functions specifically set forth in this section 1819.201 or that the Procurement Officer may prescribe for implementing the Small Business Program, including responsibility for the Labor Surplus Area Program described in FAR part 20. When the Head of an installation considers that the volume of procurement or the functions relating to procurement at the installation do not warrant a full-time Small Business Specialist, these duties may be assigned to procurement personnel on a part-time basis.

(c) *Small Business Specialists.* Small Business Specialists appointed under paragraph (b) of this section shall perform the following duties, as the Procurement Officer determines appropriate to the installation:

(1) Maintain a program designed to locate capable small business sources for current and future procurements.

(2) Coordinate inquiries and requests for advice from small business concerns on procurement matters.

(3) Before issuance of solicitations or contract modifications for additional supplies or services, determine that small business concerns will receive adequate consideration, including initiation of set-asides (see FAR subpart 19.5).

(4) If small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, initiate action (unless there are sufficient and valid reasons to the contrary), in writing, with appropriate technical and contracting personnel to ensure that necessary specifications or drawings for current or future procurements will be available.

(5) Review procurement programs for possible breakout of items suitable for procurement from small business concerns.

(6) Advise small business concerns regarding financial assistance available under laws and regulations, assist such concerns in applying for it, and ensure that small business concerns' requests for financial assistance are not treated as a handicap in securing the award of contracts.

(7) Participate in responsibility determinations (see FAR 9.103) whenever small business concerns are involved.

(8) Participate in the evaluation of prime contractors' small business subcontracting programs (see FAR 19.705-4).

(9) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the Small Business Program.

(10) Ensure that participation of small business concerns is accurately reported.

(11) Notify the Procurement Officer of possible contracting opportunities in labor surplus areas.

(12) Make available to SBA copies of solicitations when requested.

(13) Act as liaison between contracting officers and SBA field offices and representatives in connection with set-asides, certificates of competency, and any other matters in which the Small Business Program may be involved. Procurements in which certificates of competency are requested shall be reported in writing to the Director, Small and Disadvantaged Business Utilization, NASA Headquarters, (Code K). The report should describe

the requirement, list the offerors, and give the contract prices specified in the offers as submitted and the reason for the proposed rejection of an otherwise acceptable small business offer. Pertinent dates, such as the required date for the completion of the procurement and the date of the request for the certificate of competency, should also be furnished.

(14) In cooperation with contracting officers and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. Regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information regarding small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

(15) When a small business concern's offer has been rejected for nonresponsiveness or nonresponsibility, aid, counsel, and assist that concern, upon its request, in understanding requirements for responsiveness and responsibility so that the concern can qualify for future awards.

1819.202 Specific policies.

1819.202-4 Solicitation.

The contracting officer shall include in the solicitation mailing list the names of firms submitted by SBA, unless there is a valid reason for not so doing.

Subpart 1819.3—Determination of Status as a Small Business Concern

1819.302 Protesting a small business representation.

The contracting officer shall not make awards of small business set-aside procurements before:

(a) Five working days after bid opening for sealed-bid acquisitions or

(b) The deadline for submitting a protest that was included in the notification to apparently unsuccessful offerors. (See FAR 19.302(h)(1).)

Subpart 1819.4—Cooperation With the Small Business Administration

1819.401 General.

Contracting officers shall consult and cooperate with SBA to carry out the purposes of the Small Business Act.

Subpart 1819.5—Set-Asides for Small Business

1819.501 General.

The Small Business Specialist: (a) May make certain set-aside recommendations;

(b) Is responsible for reviewing those procurements not set aside; and

(c) Is responsible for taking action in accordance with FAR 19.506(b).

[54 FR 53631, Dec. 29, 1989]

1819.502 Setting aside acquisitions.

1819.502-3 Partial set-asides.

(a) (1) Contracting officers shall require offers obtained from firms eligible for the set-aside portion of the requirement under the clause at FAR 52.219-7, Notice of Partial Small Business Set-Aside, to be in writing and to include agreement:

(i) On the price for the available set-aside quantity,

(ii) On the delivery schedule,

(iii) That all other terms and conditions of the solicitation apply to the set-aside award, and

(iv) To include the clauses at FAR 52.215-1, Examination of Records by the Comptroller General, and FAR 52.215-2, Audit—Negotiation.

(2) When the non-set-aside portion has been awarded to a small business concern entitled to receive the set-aside portion, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall:

(i) Refer to the contractor's offer on the set-aside quantity,

(ii) State the price and delivery schedule applicable to the set-aside quantity, and

(iii) Include the clauses at FAR 15.215-1 and 15.215-2.

the contracting officer shall attach to the supplemental agreement copies of all pertinent documents, including the signed offer. The contracting officer shall also sign the supplemental agreement, but the contractor need not, since the contractor's signature on the attached offer is sufficient.

(3) When the non-set-aside portion has been awarded to a firm other than the concern entitled to receive the set-aside portion, the contracting officer shall award the set-aside portion using Standard Form 26. The offers obtained and the award form used shall reference and include the same data required by paragraphs (a) (1) and (2) of this section. Also, the award shall reference in Block 18 of SF 26 the applicable solicitation and the contractor's written offer. The contracting officer shall attach copies of the solicitation and offer and shall sign the SF 26, but the contractor need not, since the contractor's signature on the attached offer is sufficient.

(b) The contracting officer shall separately report awards of the non-set-aside portions of small business set-aside procurements (see subpart 1804.6).

1819.503 Setting aside a class of acquisitions.

The contracting officer shall retain a copy of each class set-aside determination.

1819.505 Rejecting set-aside recommendations.

(a) The Small Business Specialist may make a set-aside recommendation with respect to any individual or class set-aside except those on which an SBA representative has made a recommendation.

(b) If the Small Business Specialist recommends that an individual procurement or a class of procurements, or a portion thereof, be set aside, the contracting officer shall promptly either concur in or disapprove the recommendation, stating in writing the reasons for disapproval.

(c) If the contracting officer disapproves the Small Business Specialist's recommendation, the contracting officer shall promptly refer the case to the SBA representative (if one is assigned and available) for review. The Small Business Specialist shall take no further appeal action. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the Small Business Specialist and the contracting officer shall be accomplished in accordance with the procedures in paragraph (f) of this section.

(d) All cases involving the non-initiation of a set-aside, whether resulting from (i) a joint decision of the Small Business Specialist and the contracting officer or (ii) a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for review. The SBA representative must either concur with the decision or determination or appeal the case under FAR 19.505.

(e) When an SBA representative is not assigned or available and the contracting officer disagrees with the Small Business Specialist's recommendation on a small business set-aside for an individual procurement or a class of procurements, or a portion thereof, and so notifies the Small Business specialist in writing, or if the Small Business Specialist disagrees with the contracting officer regarding withdrawal or modification of a set-aside determination, the Small Business Specialist may appeal in writing to the Procurement Officer (see 1819.201(b)) for a decision, which shall be final. The contracting officer shall place a memorandum of the Procurement Officer's decision in the contract file. If the decision approves the contracting officer's action, the Small Business Specialist shall forward complete documentation of the case to the Director of Small and Disadvantaged Business Utilization, NASA Headquarters, Code K.

(f) The contracting officer shall prepare, sign, and retain in the contract file a memorandum of any withdrawal or modification or of nonconcurrence in a recommended set-aside action.

[54 FR 28260, July 5, 1989, as amended at 54 FR 53631, Dec. 29, 1989]

Subpart 1819.6—Certificates of Competency and Determinations of Eligibility

1819.601 General.

On proposed awards exceeding the small purchase limitation, the contracting officer shall request a preaward survey (see FAR 9.106) before determining that a responsive small business firm is not responsible.

1819.602 Procedures.

1819.602-1 Referral.

The contracting officer shall forward a copy of the communication referring the matter to SBA through the Procurement Officer to the Director, Small and Disadvantaged Business Utilization, NASA Headquarters, (Code K).

1819.602-3 Resolving differences between the agency and the Small Business Administration.

(a) When there is a disagreement between the contracting officer and SBA, the contracting officer shall forward to the Assistant Administrator for Procurement (Code H) through channels, on an expedited basis, a complete case file with a request that the case be considered for appeal to SBA Headquarters. The contracting officer shall include the data already furnished to SBA, SBA's rationale for proposing to issue a certificate of competency, and the contracting officer's comments. The contracting officer shall suspend procurement action until informed by the Assistant Administrator for Procurement of the final decision in the case.

(b) If the Assistant Administrator for Procurement concludes that the referral to SBA should be withdrawn and a contract awarded without benefit of a certificate of competency, the Assistant Administrator for Procurement shall inform the contracting officer and provide written instructions on how to proceed with the procurement.

(c) If the Assistant Administrator for Procurement agrees with the contracting officer's recommended appeal action, the contracting officer shall request SBA's Central Office to review the SBA Regional office's proposal to issue a certificate of competency.

1819.602-70 Reports on certificates of competency.

Small Business Specialists shall inform the Director of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K), quarterly in writing, of all certificate of competency cases initiated during the quarter and of the final disposition made on cases during the quarter, including the number and dollar value of certificates of competency issued during the period. The Small Business Specialist shall include the company name, item being procured, solicitation number, dollar value of the procurement, and date the case was submitted to SBA. In addition, the Small Business Specialist shall provide advice and data for all cases where:

(a) The small business concern elects not to file an application for a certificate of competency,

(b) SBA declines to issue a certificate of competency, or

(c) The contracting activity reverses the pre-award survey activity's negative finding on responsibility, withdraws the referral to SBA, and makes the award.

Subpart 1819.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

1819.707 The Small Business Administration's role in carrying out the program.

Under the provisions of FAR 19.707(a) (2) and (3), 5 days are allotted for SBA review of solicitations and contracts subject to the subcontracting program. In the absence of SBA request for the documents, the contracting officer may elect not to seek review.

1819.708 Solicitation provisions and contract clauses.

1819.708-70 NASA solicitation provision.

The contracting officer shall insert the provision at 1852.219-73, Small Business and Small Disadvantaged Business Subcontracting Plan, in solicitations containing the clause at

FAR 52.219-9. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan. When offerors are to include subcontracting plans in their initial offer as contemplated by FAR 19.705-2(d), or if a noncompetitive solicitation will be issued, the contracting officer may use the provision with its Alternate I.

Subpart 1819.8—Contracting With the Small Business Administration (The 8(a) Program)

1819.804 Evaluation, offering, and acceptance.

The Small Business Specialist shall review and evaluate all procurement requirements to determine their suitability for offering to SBA for 8(a) acceptance and make a recommendation to the contracting officer concerning award to SBA.

[55 FR 12175, Apr. 2, 1990]

Subpart 1819.10—Small Business Competitiveness Demonstration Program

SOURCE: 54 FR 39371, Sept. 26, 1989, unless otherwise noted.

1819.1005 Applicability.

The targeted industry categories for NASA and their Standard Industrial Classification (SIC) codes are:

SIC Code and Industry Category

3571	Electronic Computers
3577	Computer Peripheral Equipment, not elsewhere classified
3663	Radio & TV Broadcasting and Communications Equipment
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, not elsewhere classified
3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments
3827	Optical Instruments and Lenses
7371	Computer Programming Services
7373	Computer Integrated Systems Design
7379	Computer Related Services, not elsewhere classified.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1822.1—Basic Labor Policies

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Subpart 1822.70—Nondiscrimination—Government Lease

1822.7001 Policy.
1822.7002 NASA contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28263, July 5, 1989, unless otherwise noted.

Subpart 1822.1—Basic Labor Policies

1822.101 Labor relations.

1822.101-1 General.

(a) NASA contracting officers, in taking any of the actions prescribed or authorized in FAR part 22 or this part 1822, shall consult with and get advice from the labor relations advisor or other NASA official assigned the labor relations function at the installation concerned.

(b) NASA officials shall not take any action regarding labor matters involving major policy determinations having a substantial impact on the activities of NASA or other Government agencies without the prior approval of the Director, Industrial Relations Office (Code NR). A full report concerning any labor relations problem, particularly where a labor dispute significantly threatens to affect important NASA procurements, shall be furnished to Code NR in accordance with 1822.101-3.

(c) When a strike that may have an adverse effect on NASA programs is imminent or in progress at a prime contractor's or subcontractor's plant, contracting officers shall—

(1) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and, if appropriate, of the actions NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission. If the strike is in a subcontractor's plant, the subcontractor may be approached only through the prime contractor;

(2) Explore the possibility of locating other sources for the supplies or services to have been provided by the strike-threatened plant; and

(3) Consider taking the actions set forth at FAR 22.101-4.

1822.101-3 Reporting labor disputes.

Reports of actual or incipient labor-management disputes affecting NASA procurements, operations, or services shall be submitted as specified by the Director, Industrial Relations Office. These reports shall be made as early as possible and shall include immediately available information. Supplemental reports shall be made, as appropriate, to provide full information and cover new developments. Reports shall be sent by the most expeditious means required by the seriousness of the situation. When an immediate critical effect on NASA procurements is probable, the initial report shall be made by telephone and followed by an electronically transmitted written message or a confirming letter. Reports shall describe, but need not be limited to—

(a) The nature of the actual or incipient dispute, including whether a strike, lockout, slow-down, shut-down, or picketing is involved and the degree of emergency presented;

(b) The character, quantity, and importance of the supplies, operations, or services involved, including scheduled performance and delivery dates and the relation of the production involved to the total procurement program;

(c) The identity and location of the parties to the dispute and their representatives, including the approximate number of employees involved;

(d) The need for and availability of alternative facilities to furnish the items involved within the time required;

(e) Any critical items that should be removed from the plant or work site or should continue to be processed there with the consent of the parties to the dispute; and

(f) Recommended action to be taken by NASA.

1822.101-4 Removal of items from contractors' facilities affected by work stoppages.

When the contracting officer determines that it would be in the Government's best interest to remove items or to arrange for shipment of urgently required items as provided in FAR 22.101-4(a)(2), the contracting officer shall first request approval from Code NR and then take such action as is approved.

1822.101-70 Inspection of material during labor disputes.

Despite the existence of a labor dispute, inspection functions at contract plants or sites shall be performed as normally required during contract performance, unless the inspector's safety may be endangered.

1822.101-71 Admission of labor representatives to contract sites.

NASA activities may not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with safety and security regulations and performance of the contract work involved.

1822.101-72 Workers Adjustment and Retraining Notification (WARN) Act.

(a) The WARN Act (Pub. L. 100-379) provides that employers of 100 or more full-time employees or 100 or more employees who work 4,000 hours in a work week shall give 60 days notice to affected employees prior to a plant closing or mass layoff as defined in the Act. When the required notice is not given, certain wage and benefit protections accrue to affected employees and financial penalties may be assessed against the employer.

(b) The Act may apply to certain NASA contracts (e.g., on-site support service contracts) if the incumbent fails to win on recompetition for the succeeding period or if the contract requirement is discontinued. Some of the costs for noncompliance with the Act could be subject to reimbursement by the Government. Accordingly, the contracting officer shall give a letter notification to on-site support service contractors alerting them to the possible applicability of the WARN Act.

(c) Implementation of the Act requires no action by the Government. NASA employees are not to offer advice to contractor employees or to the management of affected contractors concerning implementation of the Act. Government employees and officials are not covered by the Act.

[54 FR 39371, Sept. 26, 1989]

1822.102 Federal and State labor requirements.

1822.102-70 Suspension or relaxation of State labor standards.

(a) NASA officials shall not initiate applications to State agencies or officials for the suspension or relaxation of State labor standards.

(b) When suspension or relaxation of State labor standards does not conflict with Federal labor laws, contracting officers may support applications of contractors or subcontractors if—

(1) The required products or services are in short supply and failure to meet production schedules for critically needed end items will result unless the standards are suspended or relaxed;

(2) No alternative sources of supply for such products or services are available within the required delivery schedule;

(3) Remedial action (such as recruitment, training, and more effective utilization of labor) is not practicable; and

(4) The granting of the application will not result in impairment of working conditions to the extent that productivity at the facility will be adversely affected.

(c) NASA letters of support will be addressed to the appropriate State agency and will indicate—

(1) The facilities and services affected; and

(2) The extent of suspension or relaxation of the particular State labor standard required to complete the specific work in conformity with the delivery schedule.

1822.103 Overtime.

1822.103-4 Approvals.

The Procurement Officer or designees are authorized to approve overtime premiums at Government expense. If two or more contracting offices have current contracts at a single facility and approval of overtime by one will affect the performance or cost of contracts of another, the approving official shall obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which premiums will be approved. If the approving officials do not agree within a reasonable time, a decision shall be obtained through the center's normal management channels. Ordinarily, in the absence of evidence to the contrary, a contracting office may rely on the contractor's statement that approval will not affect performance or payments under any contract of another contracting office. Designations to approve overtime shall be in writing and shall not be delegated under the first level of supervision below the Procurement Officer, except that delegation may be made to the head of a procurement function at geographically remote branch facilities (e.g., Wallops Flight Facility or Dryden Flight Research Facility) without power of redelegation.

Subpart 1822.3—Contract Work Hours and Safety Standards Act

1822.302 Liquidated damages and overtime pay.

Disposal of funds withheld or collected for liquidated damages shall be in accordance with direction of the Director, Industrial Relations Office (Code NR), who is the agency head's designee relative to liquidated damages under the Contract Work Hours and Safety Standards Act.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.403-4 Department of Labor regulations.

For industrial relations actions requiring communication with the Department of Labor, National Headquarters, Washington, DC (including the Administrator, Wage and Hour Division), contracting officers shall provide the appropriate information and supporting documentation to the Industrial Relations Office (Code NR), which shall make all contacts with the Department of Labor on these matters.

1822.404-3 Procedures for requesting wage determinations.

Contracting officers shall submit requests for project wage determinations to Code NR at least 55 days (70 days if possible) before issuing the solicitation.

1822.406-2 Wages, fringe benefits, and overtime.

In implementing FAR 22.406-2(b)(2), the contracting officer shall provide information to the Director, Industrial Relations Office (Code NR), who shall submit the question of cash equivalents to the Department of Labor for final determination.

1822.406-8 Investigations.

The contracting officer is responsible for conducting investigations, as provided by FAR 22.406-8(a), of labor violations relative to contracts under his/her cognizance. The agency head's designee for receiving and processing contracting officer reports of violations is the Director, Industrial Relations Office (Code NR), who, with the concurrence of the Associate General Counsel for Contracts, shall forward reports of violations to the Attorney General in accordance with FAR 22.406-8(d)(2)(iv).

1822.406-9 Withholding from or suspension of contract payments.

Disposal of funds withheld or collected for liquidated damages under the Davis-Bacon Act shall be in accordance with direction of the Direc tor, Industrial Relations Office (Code NR).

1822.406-11 Contract terminations.

Contracting officers shall forward reports of contract or subcontract terminations for violation of labor standards clauses to the Director, Industrial Relations Office (Code NR), who shall submit the reports in accordance with FAR 22.406-11.

1822.406-13 Semiannual enforcement reports.

Procurement Officers shall submit semiannual enforcement data within 30 days after the end of the reporting period specified in FAR 22.406-13 to the Office of Procurement (Attn: Code HP) for consolidation and submission to the Department of Labor. Negative statements are required. The Procurement Policy Division (Code HP) is the point of contact regarding data to be included in the submissions.

Subpart 1822.6—Walsh-Healy Public Contracts Act

1822.604 Exemptions.

1822.604-2 Regulatory exemptions.

Applications for exemptions from one or more of the Act's stipulations under FAR 22.604-2(c)(1) shall be submitted in writing through the contracting officer, with pertinent data and recommendations to the Director, Industrial Relations Office (Code NR).

1822.608-4 Award pending final determination.

The Procurement Officer shall approve, with the concurrence of the Director, Industrial Relations Office (Code NR), certifications for immediate award in accordance with FAR 22.608-4(b). The contracting officer shall give written notice of the decision to award through Code NR to the DOL.

Subpart 1822.8—Equal Employment Opportunity

Source: 55 FR 12175, Apr. 2, 1990, unless otherwise noted.

1822.804-2 Construction.

Each procurement office will maintain and furnish to contracting officers the listing required by FAR 22.804-2(b). The Assistant Administrator for Procurement (Code HP) will furnish the listing to be maintained. The current listing is 45 FR 65979 "Goals for Minority Participation in the Construction Industry" (October 3, 1980).

1822.807 Exemptions.

Requests for exemption pursuant to FAR 22.807(a)(1) shall be forwarded to the Administrator through the Headquarters Procurement Policy Division (Code HP), which shall obtain concurrence from appropriate Officials-in-Charge. Requests shall be accompanied by detailed written justification and the proposed exemption request for signature.

1822.870 Reports and other required information.

(a) If an offeror completes a negative representation pursuant to FAR 52.222-22, the contracting officer shall obtain the contractor's initial report within 30 days of contract award and retain it in the contract file. Such a report by the prime or subcontractor is required by 41 CFR 60-1.7 and FAR 22.8.

(b) If requested by a contractor or subcontractor, any reports filed with the contracting officer shall be held in confidence as privileged information in accordance with 32 CFR 286.6(b)(4). All reports required by 1822.870(a) may be used only for the administration of Executive Order 11246, the Civil Rights Act of 1964, or in furtherance of the Act or Executive Order.

Subpart 1822.10—Service Contract Act of 1965

Source: 54 FR 39371, Sept. 26, 1989, unless otherwise noted.

1822.1001 Definitions.

Agency labor advisor means the Director, Industrial Relations Office, NASA Headquarters (Code NR).

1822.1003 Applicability.

All requests for determinations and exemptions relating to the Service Contract Act shall be submitted in writing, coordinated by appropriate procurement personnel, and forwarded to Code NR.

1822.1007 Requirement to submit notice.

(a) Contracting officers shall ensure that completed Standard Forms 98/98a, Notice of Intention to Make a Service Contract and Response to Notice (original and 4 copies), reaches Code NR at least 70 days before issuing any solicitation, opening negotiations for contract extension, or exercising a contract option.

(b) Requests to expedite wage determinations shall be sent to Code NR.

1822.1008 Procedures for preparing and submitting notice (SF 98/98a).

The information listed below by item number shall be furnished, in addition to that required by the SF 98/98a:

(a) *Item 6*. Insert on the far left side of the block the code identifying the type of proposed action:

Code and Proposed Action

I New contract (use only when services are not presently being performed).

II Recompetition of services.

III Contract modifications affecting the scope of the work (see FAR 22.1008).

IV Extension of contract performance through exercise of an option or otherwise (see FAR 22.1008).

V Other. When a multiyear contract (funding is not subject to annual appropriation) is to be entered into, specify "multiyear R&D funded" on the SF 98.

(b) *Item 8*. (1) If the proposed contract will be awarded under section 8(a) of the Small Business Act, insert both the Small Business Administration and the name of the subcontractor.

(2) If no wage determination is available for the particular contract, insert "None" in Item 8.b.

(c) *Item 10*. Add the solicitation number, if known.

(d) *Item 12*. (1) When entering into a new service contract, list all classes of work expected to be performed under the contract under this item, regardless of whether the class of employees is considered professional, executive, administrative, or hourly. However, if submission of the SF 98/98a is in connection with any action other than a new contract (Code I in paragraph (a) of this section), list only the classes of work that the incumbent indicates are "nonexempt."

(2) When classifications include both categories of employees covered by a collective bargaining agreement and those not represented by a union, mark the classifications that are unionized with an asterisk.

(3) If the classification of work is not known, use the most descriptive job title available for the work to be performed under the contract.

(e) *Item 13*. If the number of employees is not known, the estimated hours required to perform the tasks should be indicated so that staffing estimates can be determined and listed.

(f) *Item 14*. Include in this item the wage rates that would be paid if the employees were subject to 5 U.S.C. 5332 (GS grades).

Subpart 1822.11—Professional Employee Compensation

1822.1103 Policy, procedures, and solicitation provisions.

(a) The instructions in paragraph (a) of the provision at FAR 52.222-46, Evaluation of Compensation for Professional Employees, shall be augmented in Section M of the solicitation with an explanation of how the Government will evaluate the offeror's plan. The Government's assessment of the plan shall be a weighted and scored evaluation criterion under a Mission Suitability Factor in order to ensure that the plan reflects a sound management approach and understanding of the contract requirements. This criterion shall be accorded sufficient weight and relative order of importance to be effective under the particular circumstances involved. When (1) a significant number of professional employees are involved, the performance period is long, and the cost is relatively large, or (2) there is continuity of the same or similar services at the same location, the weight and relative importance of the criterion shall be in the "most important" or "very important" category, as considered appropriate. The lesser weighting should be employed only after careful consideration of the possible impact on labor stability.

(b) The cost realism of professional compensation proposed (see paragraph (c) of the provision at FAR 52.222-46) shall be identified as an evaluation factor in Section M of the solicitation.

Subpart 1822.13—Special Disabled and Vietnam Era Veterans

1822.1306 Complaint procedures.

The Assistant Administrator for Equal Opportunity Programs (Code E) is the NASA official designated to act on complaints received about administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972.

[54 FR 28263, July 5, 1989, as amended at 55 FR 27089, June 29, 1990]

Subpart 1822.70—Nondiscrimination—Government Lease

1822.7001 Policy.

It is NASA policy to include a Facilities Nondiscrimination clause in leases when NASA is the lessee. The policy has been adopted because Federal employees belonging to minority groups and other members of minority groups doing business with the Government in some parts of the country have been denied the use of public facilities located in buildings where the Government leases office space.

1822.7002 NASA contract clauses.

(a) The contracting officer shall include the clause at 1852.222-70, Facilities Nondiscrimination Notice, in all solicitations involving leases and in any resulting leases.

(b) The contracting officer shall include the clause at 1852.222-71, Facilities Nondiscrimination, in all solicitations involving leases and in any resulting leases under which the annual rental, combined with that of any other NASA leases of space in the same building, exceeds $10,000.

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1823.1—Pollution Control and Clean Air and Water

Sec.
1823.106 Delaying award.
1823.107 Compliance responsibilities.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

1823.302 General.
1823.303 Contract clause.
1823.303-70 NASA clause.
1823.370 Acquisition of potentially hazardous items from or through another Government agency.

Subpart 1823.70—Safety and Health

1823.7000 Scope of subpart.
1823.7001 Policy.
1823.7002 Responsibility.
1823.7003 Hazardous operations.
1823.7004 Contract clause.

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.
1823.7102 Procedures.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28266, July 5, 1989, unless otherwise noted.

Subpart 1823.1—Pollution Control and Clean Air and Water

1823.106 Delaying award.

All notifications initiated by the contracting officer under FAR 23.106 shall be submitted to EPA through the Procurement Officer and the Assistant Administrator for Procurement, NASA Headquarters (Code HS).

1823.107 Compliance responsibilities.

Notifications under FAR 23.107 shall be submitted through the same channels as under 1823.106.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

1823.302 General.

As authorized under FAR 23.302(c)(3), NASA has designated electrosensitive initiating devices (squibs) a "potentially hazardous" item requiring safety controls.

1823.303 Contract clause.

1823.303-70 NASA clause.

The contracting officer shall insert the clause at 1852.223-72, Potentially Hazardous Items, in solicitations and contracts involving potentially hazardous items or components. Insert the potentially hazardous items or components.

1823.370 Acquisition of potentially hazardous items from or through another Government agency.

When acquiring supplies or services from or through another Government agency (e.g., see FAR part 8 and FAR subpart 17.5), NASA shall request that agency to furnish NASA the data required by FAR subpart 23.3 and the clause at FAR 52.223-3.

Subpart 1823.70—Safety and Health

1823.7000 Scope of subpart.

This subpart sets forth NASA's safety and health policy, assignment of responsibilities, and requirements relating to its contractors.

1823.7001 Policy.

Contractors and subcontractors shall perform in a safety-and-health-conscious environment that, within the limits of controllable hazards, will—

(a) Protect the life, health, and physical well-being of NASA and contractor employees during their work on NASA programs;

(b) Ensure proper protection of the public from hazards incident to operations of NASA contractors and subcontractors;

(c) Avoid accidental work interruptions that could delay NASA programs;

(d) Prevent contamination of, damage to, and loss of property, supplies, and equipment;

(e) Provide data from which risks and loss factors in space technology related to NASA programs can be accumulated and evaluated; and

(f) Comply with applicable regulations, standards, and guides.

1823.7002 Responsibility.

(a) *Originators of procurement requests.* In accordance with installation safety and health screening criteria, originators of procurement requests shall ensure that requests involving safety or health considerations are processed through the appropriate installation safety officials and occupational health officials or other designated responsible officials for:

(1) Determining whether hazards are involved in the procurement,

(2) Formulating or selecting specific safety and health provisions applicable to the procurement in accordance with FAR subpart 23.3 and applicable NASA instructions, and

(3) Determining to what extent a contractor safety and health plan will be required.

(b) *Installation safety officials, occupational health officials, or other designated responsible officials.* The appropriate installation safety and health officials, within their respective areas of responsibility, shall advise and assist the contracting officer in—

(1) Evaluating prospective contractors' safety and health programs;

(2) Determining to what extent safety and health provisions, if any, should be included in the proposed procurement;

(3) Assigning the specific safety and environmental health provisions to be included in the contract Schedule;

(4) Determining, in coordination with the cognizant program or project manager, the need for and adequacy of contractors' safety and health plans;

(5) Assigning the specific occupational medicine provisions to be included in the contract Schedule;

(6) Determining the extent and form of accident or incident reports required of contractors in compliance

with the Federal Reports Act of 1942 and NASA reporting requirements;

(7) Requesting inspections of NASA contractors by representatives of the Occupational Safety and Health Administration (OSHA) when appropriate; and

(8) Reviewing contractor hazardous operations procedures and certification requirements.

(c) *Headquarters occupational health official.* At installations where medical and environmental health officers or other designated responsible officials are not available to assist with the formulation of occupational medicine and environmental health provisions of a contract, the Director, NASA Occupational Health Office, NASA Headquarters (Code NPG), shall assume this responsibility.

(d) *Contracting officer.* (1) The contracting officer shall obtain advice, assistance, recommendations, and applicable requirements from the appropriate safety and health officials before issuing any solicitation for—

(i) Construction, modification, or demolition of facilities on Government installations;

(ii) Manufacture of aerospace systems, including such items as power units, energy systems, boosters, engines, liquid and solid fuels, oxidizers, and propellants;

(iii) Transportation of fuels, oxidizers, hazardous chemicals, or other hazardous or regulated materials;

(iv) Research, development, or test of engines, related components and propellants involving hazardous operations or the use of hazardous or regulated materials;

(v) Services on Government installations involving hazardous operations or the use of hazardous or regulated materials;

(vi) Operations involving the use of or exposure to potential health hazards (e.g., asbestos, polychlorinated biphenyls (PCB's)), confined space entries, use of hazardous materials, or potential contamination of property or pollution of air, water, vegetation, or soil;

(vii) Activities that may (by either direct or secondary effect) adversely affect the work environment by the use of ionizing radiation, microwaves, noise, lasers, ultraviolet, or infrared sources; or

(viii) Operations necessitating exposures in neutral buoyancy or hyperbaric chambers and operations related to them.

(2) Before issuing a stop-work order under paragraph (d)(2) of the Safety and Health clause at 1852.223-70, the contracting officer shall effect coordination with the appropriate safety and health officials and with the cognizant program or project manager.

1823.7003 Hazardous operations.

Hazardous operations are those involving the use of, or handling of, hazardous materials or other materials, phenomena, or elements at abnormal environmental or physical parameters that could result in injury, illness, or property damage if special precautions are not followed (e.g., high-pressure gas operations in excess of 150 pounds per square inch gauge, low-pressure high-volume gas operations, voltages above 550 volts, storage or handling of propellants or explosives, use of "heavy lift" material handling equipment, high- or low-temperature environments, environments with less than 19.5 percent or more than 25 percent oxygen by volume at normal atmospheric pressure, reduced gravity, radiation, or excessive noise).

1823.7004 Contract clause.

(a) Specific system safety requirements to be included in the contract for the purpose of procuring system safety engineering services shall be defined in the contract Schedule in accordance with applicable NASA instructions.

(b) Any unique facility safety or health requirements that are in addition to the general requirements of the clause at 1852.223-70, Safety and Health, shall be prescribed as required by 1823.7002(b)(3).

(c) Except as provided in paragraph (d) of this section, the clause at 1852.223-70 shall be included in—

(1) All negotiated contracts of $1,000,000 or more, unless the contracting officer makes a written determination in accordance with 1823.7002(b)(2) that, under the cir-

cumstances of the procurement, the clause is not necessary;

(2) All construction, repair, or alteration contracts in excess of $25,000;

(3) All contracts having, within their total requirement, construction, repair, or alteration tasks in excess of $25,000; and

(4) Any procurement regardless of dollar amount when (i) any deliverable contract end item is of a hazardous nature, or (ii) during the life of the contract it can reasonably be expected that hazards will be generated within the operational environment and the contracting officer determines that they warrant inclusion of the clause.

(d) The clause prescribed in paragraph (c) of this section may be excluded from any contract subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6) or the Service Contract Act of 1965 (see FAR Subpart 22.10) in which the application of the act and its implementing regulations constitute adequate safety and health protection. However, the clause should not be excluded without approval of the appropriate safety and health official.

(e) The contracting officer shall insert the provision at 1852.223-73, Safety and Health Plan, in solicitations containing the clause at 1852.223-70, when a Safety and Health Plan is to be submitted with the offeror's proposal. This clause may be modified to identify specific information that is to be included in the plan. The contracting officer shall include the plan, as approved by the contracting officer, in any resulting contract. See 1852.223-70.

(f) When the installation safety/health officials recommend that a Safety and Health Plan be submitted by the apparently successful offeror after notification of selection but before contract award, the clause at 1852.223-73 shall be used with its Alternate I.

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.

The contracting officer shall insert the clause at 1852.223-71, Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

1823.7102 Procedures.

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.
1824.103 Procedures.

Subpart 1824.2—Freedom of Information Act

1824.202 Policy.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28268, July 5, 1989, unless otherwise noted.

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

For NASA rules and regulations implementing the Privacy Act, see NMI 1382.17 (14 CFR part 1212).

1824.103 Procedures.

The Act applies to any contractor maintaining a system of records to accomplish a NASA mission. The following examples of systems of records are provided to assist contracting officers in determining whether or not the Privacy Act applies to records maintained by contractors. This list is not all inclusive.

(a) Systems of records to which the Privacy Act applies include—

(1) Records maintained by a contractor in the performance of administrative functions for a Federal agency, such as Federal personnel and payroll records; and

(2) Records maintained by a contractor providing health services to agency personnel, such as health records of Federal employees.

(b) Systems of records to which the Privacy Act does not apply include—

(1) Records maintained by a contractor on individuals employed by the contractor on its own behalf for the purpose of providing supplies and services to the Federal Government; and

(2) Records that—(i) Are maintained under contracts with educational institutions to provide training;

(ii) Are generated on students working under the contract relative to their attendance (admission forms, grade reports, etc.);

(iii) Are similar to those maintained on other students; and

(iv) Are commingled with their records on other students.

[54 FR 39372, Sept. 26, 1989]

Subpart 1824.2—Freedom of Information Act

1824.202 Policy.

(a) NASA implementation of the Freedom of Information Act is found in NMI 1382.2 (14 CFR part 1206).

(b) When receiving any Freedom of Information Act request from the public, the contracting officer shall immediately refer the request to the Freedom of Information Act Officer, NASA Information Center, or other responsible point of contact as set forth in installation procedures.

PART 1825—FOREIGN ACQUISITION

Subpart 1825.1—Buy American Act—Supplies

Sec.
1825.101 Definitions.
1825.102 Policy.
1825.103 Agreements with certain foreign governments.
1825.105 Evaluating offers.
1825.108 Excepted articles, materials, and supplies.

Subpart 1825.2—Buy American Act—Construction Materials

1825.202 Policy.
1825.203 Evaluating offers.
1825.205 Solicitation provision and contract clause.
1825.205-70 NASA contract clause.

Sec.

Subpart 1825.3—Balance of Payments Program

1325.304 Excess and near-excess foreign currencies.

Subpart 1825.4—Purchases Under the Trade Agreements Act of 1979

1825.402 Policy.
1825.402-70 Centralization of foreign acquisition.
1825.403 Exceptions.
1825.403-70 Coordination of arms purchases.
1825.405 Procedures.
1825.407 Solicitation provision and contract clause.
1825.407-70 NASA solicitation provision.

Subpart 1825.6—Customs and Duties

1825.604 Exempted supplies.
1825.605 Contract clause.
1825.605-70 NASA contract clause.
1825.670 Legal representation.

Subpart 1825.7—Restrictions on Certain Foreign Purchases

1825.703 Exceptions.

Subpart 1825.9—Omission of the Examination of Records Clause

1825.903 Conditions for omission.
1825.903-70 Request for determination and findings.

Subpart 1825.10—Sanctions for Violations of Export Controls

1825.1002 Policy.
1825.1004 Procedures.

Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.
1825.7001 Definition.
1825.7002 Policy.
1825.7003 Assignment of responsibility for contract negotiation.
1825.7004 Procedure.
1825.7005 Assignment of contract administration.
1825.7006 Contracts with foreign nationals.

Subpart 1825.71—NASA Domestic Preference

1825.7100 Scope of subpart.
1825.7101 Definitions.
1825.7102 Policy.
1825.7103 Procedures.
1825.7104 Determination by United States Trade Representative.
1825.7105 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28268, July 5, 1989, unless otherwise noted.

Subpart 1825.1—Buy American Act—Supplies

1825.101 Definitions.

Canadian end product means (a) an unmanufactured end product mined or produced in Canada or (b) an end product manufactured in Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product.

1825.102 Policy.

(a) *Administrator determinations under FAR 25.102(a)(3), domestic preference inconsistent with the public interest.* (1) Within NASA, these determinations are made by the Assistant Administrator for Procurement.

(2) For blanket determinations regarding Canadian end products, see 1825.103.

(b) *Contracting officer determinations under FAR 25.102(a)(4), domestic nonavailability of end products.* (1) NASA has determined that the items listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. In addition, subject to the approval requirements of FAR 25.102(b), NASA contracting officers may make additional determinations of nonavailability both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government receives adequate consideration. A copy of each nonavailability determination shall be included in the contract file.

(2) The following is the format for nonavailability determinations made by contracting officers:

DETERMINATION OF NONAVAILABILITY

Pursuant to the authority contained in the Buy American Act (41 U.S.C. 10) and authority delegated to me by 48 CFR 1825.102(b), I hereby make the following findings:

a. (Insert a description of the item or items to be procured, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

b. (Enter the name and address of the proposed contractor or supplier and the country of origin of the items.)

c. (Include a brief statement of the necessity for the procurement.)

d. (Include a statement of facts establishing the nonavailability of similar items of domestic origin. If there is no known domestic item that can be used as a reasonable substitute, make a statement to this effect.)

On the basis of these findings, I determine that the item(s) described in paragraph a above is/are not mined, produced, or manufactured (or the articles, materials, or supplies from which the item(s) is/are manufactured are not mined, produced, or manufactured) in the United States in sufficient and reasonably available quantities of a satisfactory quality.

Accordingly, the Buy American Act requirement that procurement be made from domestic sources and that the item(s) be of domestic origin is not applicable to this procurement, since the procurement is within the Buy American Act's nonavailability exception.

Authority is granted to procure the above-described item(s) of foreign origin (country or origin) at an estimated total cost of $______, including duty and transportation costs to destination.

(Date)______
Contracting Officer______

(3) Contracting officer determinations made under this paragraph 1825.102(b) shall be approved by the head of the contracting activity if the contract is estimated to exceed $1,000,000.

1825.103 Agreements with certain foreign governments.

(a) Canadian end products and Canadian components. The Assistant Administrator for Procurement has determined that when application of the procedure in paragraph (c)(1) of this section results in the acquisition of Canadian end products, it would be inconsistent with the public interest to acquire domestic end products (see FAR 25.102(a)(3)).

(b) The Assistant Administrator for Procurement has also determined that it would be inconsistent with the public interest to apply restrictions of the Buy American Act to components mined, produced, or manufactured in Canada (see paragraph (c)(2) of this section).

(c) Accordingly, contracting officers shall—(1) Evaluate all offers for Canadian end products on a parity with offers for domestic end products, except that applicable duty (whether or not a duty-free entry certificate may be issued) shall be included in evaluating offers for Canadian end products; and

(2) Treat all components mined, produced, or manufactured in Canada as though they were mined, produced, or manufactured in the United States, except that, in evaluating offers for such components, applicable duty (whether or not a duty-free entry certificate may be issued) shall be included.

1825.105 Evaluating offers.

(a) *Examples.* The following examples illustrate how to evaluate offers of foreign (non-Canadian) end items, using the provisions of FAR 25.105.

(1) *Example 1:* Price differential of 6 percent or less between low foreign (non-Canadian) and low domestic offer from a large business not in a labor surplus area. See Table 1825-1. Since the low domestic offer is not unreasonable (that is, the low domestic offer is less than the low foreign offer plus 6 percent), award shall be made to the low domestic offeror.

(2) *Example 2:* Price differential of 6 percent between low foreign (non-Canadian) and low domestic offer from an offeror that is not a small business and/or labor surplus area concern. See Table 1825-2.

(3) *Example 3:* Solicitation permits multiple awards, and FAR 25.105(c) permits application of the evaluation procedure in 25.105(a) on a group or item-by-item basis. Each domestic offeror is a small business or labor surplus area concern, requiring that the lowest acceptable foreign offer be increased by 12 percent. When an award exceeding $250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, FAR 25.105(c) requires that the award be submitted to the agency head for decision as to whether award to the domestic concern would involve unreasonable cost. In NASA, the Administrator has delegated this authority to the Assistant Administrator for Procurement. See table 1825-3.

(i) For items 1 and 3, award would be made to the low acceptable domestic offeror, but would not be submitted to the Assistant Administrator for Procurement because—

(A) The low acceptable domestic offeror is a small business and/or labor surplus area concern;

(B) The differential does not exceed 12 percent on an item-by-item basis; and

(C) The total low acceptable domestic offer does not exceed $250,000.

(ii) For items 2 and 4, award would be made to the low acceptable foreign offeror, but would not be submitted to the Assistant Administrator for Procurement because—

(A) The low acceptable domestic offeror is a small business or labor surplus area concern;

(B) The differential exceeds 12 percent on an item-by-item basis; and

(C) The low acceptable domestic offer does not exceed $250,000.

(4) *Example 4:* Solicitation permits multiple awards, and FAR 25.105(b) permits application of the evaluation procedure in 25.105(a) on a group or item-by-item basis. Each domestic offeror is a small business or labor surplus area concern, requiring that the lowest acceptable foreign offer be increased by 12 percent. When an award exceeding $250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, FAR 25.105(c) required that the award be submitted to the agency head for decision as to whether award to the domestic concern would involve unreasonable cost. In NASA, the Administrator has delegated this authority to the Assistant Administrator for Procurement. See table 1825-4. (Note that both offers include transportation to destination and the foreign offer includes duty.)

(i) For the grouping of items 1, 2, 3, and 4, the proposed total would be submitted to the Assistant Administrator for Procurement for decision pursuant to FAR 25.105(c), which requires the agency head to decide whether award to a domestic concern would involve unreasonable cost when—

(A) The low acceptable domestic offeror on each line item is a small business or labor surplus area concern and the low acceptable foreign offer for each line item must be increased for evaluation purposes by 12 percent (see FAR 25.105(a)(2));

(B) On an item-by-item basis, the low acceptable domestic price exceeds the low acceptable foreign price plus 6 percent, but is less than the foreign price plus 12 percent; or

(C) The grouping of the four line items for purposes of a single award exceeds $250,000.

(ii) Table 1825-5 illustrates the pertinent figures in applying FAR 25.105(c). Columns 3 and 4 illustrate how award on each item would go to the domestic offeror if the 12-percent factor were added to the foreign offer. Addition of the 12-percent factor makes the foreign offer unreasonable. However, addition of only the 6-percent factor to the foreign offer makes the domestic offer unreasonable in each case because, even with the addition of the 6 percent, the foreign offer is still lower than the domestic one. Stated otherwise, because the low acceptable domestic offeror is a small business or labor surplus area firm, the price of the low acceptable foreign offeror must be raised by 12 percent for evaluation purposes. Accordingly, each evaluated price of items 1, 2, 3, and 4 exceeds the domestic price for that item. However, in each case, if only the 6-percent factor is added instead of the 12-percent factor, the individual awards would go to the foreign offeror instead of the domestic offeror, thus requiring the procurement to be submitted to the Assistant Administrator for Procurement for a final decision as to whether award to the domestic concern would involve unreasonable cost.

(b) *Tie bids.* If the evaluation procedure (that is, application of differentials) set forth at FAR 25.105 results in a tie between the foreign offer and the domestic offer, award shall be made to the domestic offeror

TABLE 1825-1

	Low bids	
	Domestic	Foreign
Cost to destination	$20,000	$19,000
Import duty		600
Total	$20,000	$19,600
Six percent differential		1,176
Total	$20,000	$20,776

TABLE 1825-2

	Low bids	
	Domestic	Foreign
Cost to destination	$20,000	$17,000
Import duty		500
Total	$20,000	$17,500
Six percent differential		1,050
Total	$20,000	$18,550

TABLE 1825-3

Item	Low Bids			Actual percent difference between bids
	Foreign	Domestic		
		A	B	
1	$50,000	$55,500		11
2	50,000		$56,500	13
3	75,000	81,750		9
4	12,000		16,250	30

TABLE 1825-4

Item	Low bids		Actual percent difference between bids
	Foreign	Domestic	
1	$100,000	$111,000	11
2	200,000	220,000	10
3	50,000	55,000	10
4	25,000	27,000	8

TABLE 1825–5

Item	1	2	3	4	5
	Foreign bid	Foreign bid plus 6%	Domestic bid	Foreign bid plus 12%	Actual percentage difference of domestic bid over foreign bid
1	$100,000	$106,000	$111,000	$112,000	11
2	200,000	212,000	220,000	224,000	10
3	50,000	53,000	55,000	56,000	10
4	25,000	26,500	27,000	28,000	8
	$375,000		$413,000		

1825.108 Excepted articles, materials, and supplies.

NASA has determined that the end products listed at FAR 25.108(d) shall be treated as domestic.

[55 FR 12175, Apr. 2, 1990]

Subpart 1825.2—Buy American Act—Construction Materials

1825.202 Policy.

(a) *Exception for unreasonable cost of domestic construction materials.* The Assistant Administrator for Procurement has determined that when the application of the procedure set forth in 1825.203 results in the acquisition of foreign construction materials, the use of domestic construction materials would unreasonably increase the cost.

(b) *Exception for impracticability of using domestic construction materials.* The Assistant Administrator for Procurement has determined that, when there is a justification as required by FAR 25.203(b), the use of domestic construction material would be impracticable.

(c) *Exception for nonavailability of domestic construction materials.* (1) NASA has determined that construction materials listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(2) In addition, subject to the approval of the head of the contracting activity where required (see FAR 25.202(b)), NASA contracting officers may make additional determinations of nonavailability under FAR 25.202(a)(3) both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government receives adequate consideration. A copy of each nonavailability determination shall be included in the contract file. The format for these nonavailability determinations is at 1825.102(b).

1825.203 Evaluating offers.

When an offer involving the use of additional foreign construction materials (other than those listed as exceptions in the solicitation; see 1825.202(c) and 1852.225-71) would be the low acceptable offer but for the Buy American Act, award shall be made on it, provided that all the following conditions are satisfied:

(a) The offer specifically designates the foreign construction materials proposed for use.

(b) As to each such foreign construction material, the data accompanying the offer show that the cost of any available acceptable domestic construction material delivered at the construction site would exceed by more than 6 percent the cost (including duty) of the designated foreign construction material delivered at the construction site.

(c) As to each such foreign construction material, the contracting officer is satisfied that the showing of a cost differential of more than 6 percent as required by paragraph (b) of this section is correct as of the date of opening of the bids or receipt of proposals.

(d) The offer is low after adding to it, for evaluation purposes, a factor of 6 percent of the cost (including duty) of all offered foreign construction materials (delivered at the construction site) that qualify under the conditions stated in paragraphs (a), (b), and (c), of this section.

1825.205 Solicitation provision and contract clause.

1825.205-70 NASA contract clause.

The clause at 1852.225-71, Nondomestic Construction Materials, shall be included in all contracts for construction. Any articles of materials and supplies that have been the subject of additional determinations under 1825.202(c)(2) shall be listed in the clause.

Subpart 1825.3—Balance of Payments Program

1825.304 Excess and near-excess foreign currencies.

The NASA Comptroller shall make the determination of the feasibility of using excess or near-excess currency required by FAR 25.304(c). The Director of Financial Management (Code BF) maintains a current list of excess and near-excess currency-countries and arranges for its publication in the NASA Travel Regulations.

Subpart 1825.4—Purchases Under the Trade Agreements Act of 1979

1825.402 Policy.

The threshold for procurements subject to the Trade Agreements Act of 1979 is $172,000.

[54 FR 28268, July 5, 1989, as amended at 55 FR 12175, Apr. 2, 1990]

1825.402-70 Centralization of foreign acquisition.

The requirement of Subpart 1825.70 that the responsibility for foreign contract acquisition be centralized at NASA Headquarters does not apply to acquisitions subject to the Trade Agreements Act of 1979. However, each contracting office (including JPL) shall coordinate with Headquarters, International Relations Division (Code XI), before awarding a contract for a designated-country end product.

1825.403 Exceptions.

1825.403-70 Coordination of arms purchases.

With respect to the exceptions in FAR 25.403(d), if a contracting officer considers an individual acquisition to be a purchase "indispensable for national security or for national defense purposes" and appropriate for exclusion from the provisions of FAR 25.4 and of this subpart 1825.4, the contracting officer shall submit a request with supporting rationale to Headquarters, Office of External Relations (Code X), for coordination with the Office of the U.S. Trade Representative.

1825.405 Procedures.

Solicitations shall require that applicable duty charges be included in the offered price, whether or not duty-free certificates are obtained. Duty charges shall be included in the price evaluation.

1825.407 Solicitation provision and contract clause.

1825.407-70 NASA solicitation provision.

In accordance with FAR 25.405(d), the contracting officer shall insert the provision at 1852.225-72, Offer in English Language and U.S. Dollars, in solicitations subject to the Trade Agreements Act of 1979.

Subpart 1825.6—Customs and Duties

1825.604 Exempted supplies.

The contracting officer shall, when purchasing items listed in Schedule 8 of the Tariff Schedules of the United States, take note of the following:

(a) Item 832 of Schedule 8 provides that "emergency war materials purchased abroad" may be imported duty-free upon certification by the Military Departments to the Commissioner of Customs. Accordingly, when a Military Department makes a purchase on behalf of NASA, or when NASA makes a purchase for a Military Department, the contracting officer shall use this duty-free exemption authority to the maximum extent practicable.

(b) Item 864.30 of Schedule 8 provides for the duty-free exemption of "articles intended solely for testing, experimental, or review purposes including plans, specifications, drawings, photographs, and similar articles for use in connection with experimental study," subject to the limitations in Headnote 1 under Item 862.20 of Schedule 8.

(c) Certain supplies (not including equipment) for vessels or aircraft operated by the United States are exempt from duty under 19 U.S.C. 1309.

(d) Under the Educational, Scientific, and Cultural Materials Importation Act of 1966, NASA has been determined eligible to request duty-free entry for instruments or apparatus under Items 851.60 and 851.65 of Schedule 8. Pursuant to this authority, the contracting officer may apply for duty-free entry of such instruments or apparatus or related repair components if no instrument or apparatus of equivalent scientific value for the purpose for which the instrument or apparatus is intended is manufactured in the United States.

(e) Item 837.00 of Schedule 8 and the Subpart A headnote of Part 3, Schedule 8, provide for duty-free entry of articles launched into or returned from space by NASA, including spare parts or necessary and uniquely associated support equipment. The contracting officer shall consult 14 CFR 1214.15 (NMI 8610.18, Space Transportation System; Duty-Free Entry of Space Articles) for procedures for obtaining the required Headquarters certificates for the duty-free entry of these articles.

1825.605 Contract clause.

1825.605-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.225-73, Duty-Free Entry Supplies, in solicitations and contracts where the possibility exists of receiving duty-free supplies. Insert the supplies that are to be accorded duty-free entry in accordance with FAR 25.604 and 1825.604.

1825.670 Legal representation.

The Office of the General Counsel (Code G), NASA Headquarters, shall represent NASA before the Court of Appeals for the Federal Circuit, in matters regarding customs and duties.

Subpart 1825.7—Restrictions on Certain Foreign Purchases

1825.703 Exceptions.

When it is proposed to procure supplies originating from sources restricted by FAR 25.702 for public use outside the United States, or when a contractor proposes to use such supplies in performing a contract for construction outside the United States, the contracting officer shall make a written finding justifying the procurement. The finding shall set forth the unusual situation, such as an emergency or the nonavailability of acceptable substitute supplies of domestic origin or from sources other than the restricted sources. The contracting officer shall make the finding a part of the contract file. If the proposed procurement is not carried out by small purchase procedures, the contracting officer shall forward the finding in triplicate to the Assistant Administrator for Procurement (Code HS), for approval.

Subpart 1825.9—Omission of the Examination of Records Clause

1825.903 Conditions for omission.

When the contracting officer omits the clause at 52.215-1 under the conditions at FAR 25.903(a)(2), the contracting officer shall prepare a written report in triplicate to be furnished to the Congress. The head of the installation concerned shall sign the report and forward it to the Assistant Administrator for Procurement (Code HC), who shall submit it to the Administrator for the Administrator's signature and forwarding to Congress.

1825.904 Determination and findings.

1825.904-70 Request for determination and findings.

The contracting officer shall ordinarily initiate the request to the Administrator for determination and findings for exclusion of the clause at 52.215-1. The request shall consist of:

(a) A letter submitted to the Administrator through normal procurement channels and

(b) A proposed determination and findings prepared for the Administrator's signature according to the format in FAR 25.904.

Subpart 1825.10—Sanctions for Violations of Export Controls

SOURCE: 54 FR 39372, Sept. 26, 1989, unless otherwise noted.

1825.1002 Policy.

In addition to the sanctions set forth in FAR 25.1002, the four sanctioned firms have been placed on the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.

1825.1004 Procedures.

When it is believed that it is necessary to contract with or purchase an item or service of one of the four sanctioned firms, the procurement officer shall prepare a request for authority to so contract in accordance with 1809.405, citing the appropriate exception in FAR 25.1003 (b), (c), or (d), and forward it to the Assistant Administrator for Procurement (Code HP) for approval.

Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.

This subpart prescribes policy and procedures for negotiating foreign contracts.

1825.7001 Definition.

Foreign contract acquisition, as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and research and development when the work is to be performed outside the United States, its possessions, and Puerto Rico by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include—

(a) Negotiation of government-to-government agreements;

(b) Negotiation of contracts with domestic concerns involving work to be performed outside the United States, its possessions, and Puerto Rico;

(c) Contracts with the Canadian Commercial Corporation; or

(d) Acquisition of books and periodicals from foreign sources of supply.

1825.7002 Policy.

Foreign contracts are a specialized area that often requires involved negotiation with instrumentalities of foreign governments. Some of the requirements for contract clauses imposed by U.S. laws conflict with statutory prohibitions imposed by foreign countries. The resolution of these issues generally involves close coordination between the International Relations Division (Code XI) and the Office of General Counsel, NASA Headquarters, and the Department of State. Accordingly, the responsibility for placing foreign contracts has been centralized at NASA Headquarters (but see 1825.402-70).

1825.7003 Assignment of responsibility for contract negotiation.

The Headquarters Contracts and Grants Division (Code HW), in conjunction with the International Relations Division (Code XI) and the Office of General Counsel, is responsible for negotiating and executing contracts with foreign governments and private foreign organizations. This assignment of responsibility is specifically limited to foreign contract acquisition, as defined at 1825.7001.

1825.7004 Procedure.

A Headquarters or field installation technical office requiring a foreign contract acquisition shall submit a properly approved procurement request through channels to the Headquarters Acquisition Division (Code HW) for action. Contract forms and clauses for foreign contracts will be as prescribed on a case-by-case basis by the Assistant Administrator for Procurement.

[54 FR 28268, July 5, 1989, as amended at 55 FR 27089, June 29, 1990]

1825.7005 Assignment of contract administration.

(a) *General.* Assignment of contract administration responsibility shall be made by agreement between the initiating office and the Headquarters Acquistion Division. Since principal responsibility for monitoring contract progress and performance generally rests with a field installation, the Headquarters Acquisition Division normally will designate the cognizant procurement officer as its authorized representative for contract administration.

(b) *Contracts performed in Canada.* (1) When, in accordance with FAR part 42, contract administration and related support service functions of the Defense Contract Administration Services are desired for a contract to be performed in Canada (whether placed with Canadian Commercial Corporation or directly with a Canadian firm), a letter or delegation shall be issued to—

Defense Supply Agency, DCASMA, Ottawa, 6th Floor, Canadian Building, 219 Laurier Avenue, West Ottawa, Ontario, Canada (K1A035).

(2) So that DCASMA, Ottawa, can utilize the capabilities of Canadian Government agencies in performing contract administration services functions, each letter of delegation shall provide that DCASMA, Ottawa, is delegated authority to act as the contracting officer's representative, with power of further delegation for the performance of the requested services.

[54 FR 28268, July 5, 1989, as amended at 55 FR 27089, June 29, 1990]

1825.7006 Contracts with foreign nationals.

(a) Proposals by NASA staff members involving program or contract possibilities with foreign nationals shall be coordinated with the International Relations Division (Code XI), NASA Headquarters, before any contracts are made with foreign nationals.

(b) Informal discussions between NASA staff members and foreign nationals could give rise to expectations concerning program or contract possibilities that are not supported by program requirements. Such situations must be avoided to preclude possible embarrassment to the United States as well as to NASA.

(c) Requests or offers by foreign nationals to NASA staff members on program or contract matters shall be reported promptly to the International Relations Division (Code XI).

Subpart 1825.71—NASA Domestic Preference

SOURCE: 55 FR 12175, Apr. 2, 1990; 55 FR 38808, Sept. 21, 1990, unless otherwise noted.

1825.7100 Scope of subpart.

This subpart implements section 209 of Pub. L. 100-685, the National Aeronautics and Space Administration Authorization Act of 1989 and applies only to solicitations and contracts which are more than 50% funded with Fiscal Year 1989 funds.

1825.7101 Definitions.

Code country, as used in this subpart, means a country that is a signatory to the Agreement on Government Procurement (the "Procurement Code"). The Code countries are Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Hong Kong, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Singapore, Sweden, Switzerland, and United Kingdom.

Code country end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Code country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such (see FAR 25.401).

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

Domestic firm, as used in this subpart, means a business entity that is organized under the laws of the United States and that conducts business operations in the United States.

Domestic product, as used in this subpart, means the final manufactured end product of a domestic firm that will be completely assembled in the United States and of which, when completely assembled, not less than 50 percent of the cost of all the components will be domestically incurred.

Foreign firm, as used in this subpart, means a business entity other than a domestic firm.

Procurement code, as used in this subpart, means the Agreement on Government Procurement (see FAR 25.400).

1825.7102 Policy.

(a) When the use of competitive procedures to buy an end product (see FAR 6.1 and 6.2) results in an apparent award of a contract to a foreign firm, the contracting officer shall award the contract to a domestic firm offering a domestic product if the domestic offer does not exceed the foreign offer by more than six percent.

(b) Paragraph (a) of this section does not apply if—

(1) Such applicability would not be in the public interest;

(2) Compelling national security considerations require otherwise; or

(3) The United States Trade Representative determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party. Examples of such international agreements are the Procurement Code, the U.S.-Canada Free Trade Agreement, and the U.S.-Israel Free Trade Agreement.

1825.7103 Procedures.

(a) The NASA domestic preference procedure is to be applied when the use of competitive procedures, including any other domestic preference program or exception thereto, indicates award is to be made to a foreign firm.

(b) The contracting officer shall award the contract to that domestic firm offering a domestic product whose price does not exceed the price of the low foreign firm by more than six percent, unless the contracting officer has documented the file to indicate that one or more of the conditions at 1825.7102(b) applies.

1825.7104 Determination by United States Trade Representative.

The United States Trade Representative has determined that when NASA is procuring supply-type products, application of the domestic preference established by section 209 of the National Aeronautics and Space Administration Authorization Act of 1989 would violate the General Agreement on Tariffs and Trade, and certain international agreements to which the United States is a party, when the following conditions exist:

(a) NASA is using competitive procurement procedures; and

(b) NASA receives one or more offers from foreign firms to supply—

(1) A Code country end product at a price above the Trade Agreements Act threshold;

(2) A Canadian end product (see FAR 25.401) at a price above $25,000 and below the Trade Agreements Act threshold; or

(3) An Israeli end product at a price above $50,000.

1825.7105 Solicitation provision and contract clause.

The contracting officer shall insert the provision at 1852.225-74, NASA Domestic Preference Certificate, and the clause at 1852.225-75, NASA Domestic Preference, in all competitive solicitations and contracts for supplies which are more than 50% funded with Fiscal Year 1989 funds.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1827—PATENTS, DATA, AND COPYRIGHTS

Subpart 1827.3—Patent Rights Under Government Contracts

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28272, July 5, 1989, unless otherwise noted.

Subpart 1827.3—Patent Rights Under Government Contracts

1827.303 Contract clauses.

In accordance with FAR 27.303, see 1827.373 for directions for using the clauses at FAR 52.227-11 and 52.227-13.

1827.370 Scope of subpart.

As authorized by FAR 27.300, in accordance with statutory requirements, this subpart sets forth NASA policy, procedures, and contract clauses with respect to inventions, discoveries, improvements, and innovations made in the performance of any work under any contract awarded by or for NASA. Except where the FAR is specifically cited, this subpart supersedes FAR subpart 27.3 in its entirety.

1827.371 Definitions.

Administrator, as used in this subpart, means the Administrator of NASA or a duly authorized representative.

Contract, as used in this subpart, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, as used in this subpart, means conceived or first actually reduced to practice; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Nonprofit organization, as used in this subpart, means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit-organization statute.

Practical application, as used in this subpart, means manufacturing, in the case of a composition or product; practice, in the case of a process or method; or operation, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law and Government regulations, available to the public on reasonable terms.

Reportable item, as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract.

Small business firm, as used in this subpart, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors shall be used. (See FAR part 19.).

Subject invention, as used in this subpart, means any reportable item that is or may be patentable or otherwise protectible under title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

1827.372 Policy.

(a) *Introduction.* (1) NASA policy with respect to any invention, discovery, improvement, or innovation made in the performance of any work under any NASA contract or subcontract with other than a small business firm or a nonprofit organization and the allocation of related property rights is based upon section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457) (the Act); and, to the extent consistent with this statute, the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and section 1(b)(4) of Executive Order 12591. NASA policy with respect to any invention made in the performance of experimental, developmental, or research work with a small business firm or a nonprofit organization is based on 35 U.S.C. chapter 18, as amended.

(2) NASA policy with respect to any invention made in the performance of experimental, developmental, or research work with a small business firm or a nonprofit organization is based on 35 U.S.C. chapter 18, as amended. The objectives of NASA policy with respect to any NASA contract subject to Section 305 of the Act are to obtain the prompt reporting of inventions, discoveries, improvements, and innovations made in the performance of any work thereunder (whether or not patentable) in order to protect the Government's interest in them and to provide their widest practicable and appropriate dissemination, early utilization, expeditious development, and continued availability for the benefit of the scientific, industrial, and commercial communities and the general public.

(3) In addition, the objectives of NASA policy with respect to inventions made in the performance of work under all NASA contracts are to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of industry in federally funded research and development efforts; to ensure that these inventions are used in a manner to promote full and open competition and free enterprise; to promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the cost of administering policies in this area.

(b) *Contractor right to title.* (1) With respect to any NASA contract with other than a small business firm or a nonprofit organization (contracts subject to section 305 of the Act; see paragraph (d) of this section, it is the policy of NASA to waive the rights (to acquire title) of the United States (with the reservation of a Government license set forth in paragraph (c) of this section and the march-in rights of paragraph (f) of this section in and to any invention made in the performance of work under the contract if the Administrator determines that the interests of the United States will be served by this action. This policy, as well as the procedures and instructions for such waiver of rights, is stated in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1. These regulations adopt the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on a contractor's request for such waiver of rights (i.e., request for title). Waiver may be requested in advance of contract award for any or all of the inventions that may be made under the contract, or for individually identified inventions reported under the contract. When waiver of rights is granted, the contractor's right to title, the rights reserved by the Government, and other conditions and obligations of the waiver shall be included in an Instrument of Waiver executed by NASA and the party receiving the waiver.

(2) With respect to any contract with a small business firm or a nonprofit organization, the contractor's right to receive title is as stated in FAR 27.302(b).

(3) It is also a policy of NASA to consider for a monetary award, when referred to the NASA Inventions and Contributions Board, any invention made in the performance of a NASA contract and reported to NASA in accordance with this subpart, and for which an application for patent has been filed.

(c) *Government license.* (1) For each invention made in the performance of work under any NASA contract with other than a small business firm or a nonprofit organization and for which waiver of rights has been granted in accordance with 14 CFR part 1245, subpart 1, the Administrator shall reserve an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States.

(2) For any invention made in the performance of work under any contract not subject to the Government license of paragraph (c)(1) of this section, FAR 27.302(c) shall apply.

(d) *Government right to receive title.* (1) Under section 305(a) of the Act (42 U.S.C. 2457(a)), any invention made in the performance of work under a NASA contract becomes the exclusive property of the United States when certain determinations stated in the Act relating to the employment status of the person making the inventions are made, unless the Administrator waives all or any part of the rights. NASA has adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on a contractor's request for waiver (see paragraph (b) of this section).

(2) Thus, NASA acquires title to any subject invention under any NASA contract with other than a small business firm or a nonprofit organization (i.e., those contracts subject to section 305(a) of the Act) unless waiver has been granted and made applicable to that invention. Such contracts are required to contain the clause at 1852.227-70, New Technology. Paragraph (b) of that clause sets forth the circumstances under which NASA acquires title to a subject invention under section 305(a). When waiver is granted, the contractor's right to title will be included in an Instrument of Waiver executed by NASA and the party receiving the waiver

(3) With respect to any contract with a small business firm or a nonprofit organization, FAR 27.302(d) shall apply.

(e) *Utilization reports.* FAR 27.302(e) shall apply, except that for any NASA contract with other than a small business firm or a nonprofit organization, the requirements for utilization reports shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, and any Instrument of Waiver executed under those regulations.

(f) *March-in rights.* FAR 27.302(f) shall apply, except that for any NASA contract with other than a small business firm or a nonprofit organization, the march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, and any Instrument of Waiver executed under those regulations.

(g) *Preference for United States industry.* FAR 27.302(g) shall apply, except that with respect to any NASA contract with other than a small business firm or a nonprofit organization, any waiver of the requirements of FAR 27.302(g) shall be in accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

(h) *Small business preference.* FAR 27.302(h) shall apply.

(i) *Minimum rights to contractor.* (1) With respect to any NASA contract with other than a small business firm or a nonprofit organization, for each reported subject invention to which the Government acquires title, the contractor is normally granted (pursuant to 14 CFR part 1245, subpart 1) a revocable, nonexclusive, royalty-free license in each patent application filed in any country and in any resulting patent. The license extends to the contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part, and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right is transferable only with the approval of the Administrator except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license granted in accordance with paragraph (h)(1) of this section, may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR part 1245, subpart 2, Licensing of NASA Inventions. This license will not be revoked in any field of use or geographical area in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that country. The procedures for revocation or modification of any license set forth herein, domestic or foreign, shall be in accordance with 14 CFR 1245.211.

(3) With respect to any contract with a small business firm or a nonprofit organization, FAR 27.302(h) shall apply.

(j) *Confidentiality of inventions.* FAR 27.302(i) shall apply.

[54 FR 28272, July 5, 1989, as amended at 54 FR 39372, Sept. 26, 1989]

1827.373 Contract clauses and solicitation provisions.

(a) Patent rights—retention by the contractor (short form).

(1) The contracting officer shall insert the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), in any solicitation and contract with a small business firm or a nonprofit organization for the performance of experimental, developmental, or research work unless a determination is made to use another clause in accordance with one of the exceptions set forth in paragraph (c) of this section. Also see 1827.374-4.

(2) When the clause at FAR 52.227-11 is included in a solicitation or contract it shall be modified as set forth at 1852.227-11.

(3) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement, or if the Administrator determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or to-be-entered-into treaty or agreement, the contracting officer shall use the clause with its Alternate

I. If other rights are necessary to effectuate the treaty or agreement, Alternate I may be appropriately modified. In long term contracts, Alternate II shall be added if necessary to effectuate treaties or agreements entered into.

(4) To qualify for the clause at FAR 52.227-11, a prospective contractor may be required to certify that it is either a small business firm or a nonprofit organization. If there is reason to question the status of the prospective contractor, the contracting officer may file a protest in accordance with 13 CFR 121.3-5 if small business firm status is questioned or require the prospective contractor to furnish evidence of its status as a nonprofit organization.

(b) *New technology.* As authorized in FAR 27.303(c)(2), the contracting officer shall insert the clause at 1852.227-70, New Technology, in any NASA contract (and solicitation therefor) with other than a small business firm or a nonprofit organization, if the contract is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, developmental, research, design, or engineering work (see also 1827.374-3 and 1827.374-4). Contracts for any of the following purposes may be considered to involve the performance of work of the type described above (these examples are illustrative and not limiting):

(1) Conduct of basic or applied research.

(2) Development, design, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements.

(3) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique.

(4) Testing of, evaluation of, or experimentation with a machine, process, concept, or technique to determine whether it is suitable or could be made suitable for a NASA objective.

(5) Construction work or architect-engineer services having as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work.

(6) The operation of facilities or the coordination and direction of the work of others, if these activities involve performing work of any of the types described in paragraphs (b) (1) through (5) of this section.

(c) Other patent rights clauses. The contracting officer shall use a patent rights clause other than as specified in paragraph (a) or (b) of this section, under the circumstances set forth in paragraphs (c) (1) through (3) of this section.

(1) When work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, the clause at 1852.227-85, Invention Reporting and Rights—Foreign, shall be used unless the contracting officer determines, with concurrence of the installation's Patent Counsel, that the objectives of the contract would be better served by use of the clause at FAR 52.227-13, Patent Rights—Acquisition by the Government. For the purposes of this paragraph (c)(1), the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See FAR 27.304-4(a) regarding subcontracts with U.S. firms.)

(2) When a contract is placed for another Government agency, that agency may request use of a specific patent rights clause (see FAR 27.304-2). If the agency for which the contract is to be placed does not request a specific clause, the contracting officer, upon consultation with the installation's Patent Counsel, may use the clause of paragraph (a) or (b) of this section, as applicable.

(3) When the contract is with a small business firm or a nonprofit organization for the performance of experimental, developmental, or research work, a determination may be made not to use the clause prescribed in paragraph (a) of this section by using the criteria and procedures in FAR 27.303(d). In such case, the installation's Patent Counsel is to be consulted for the appropriate clause to use.

(d) *Requests for waiver of rights to inventions.* The procedures for requesting waiver of rights to any inventions made in the performance of work under any NASA contract with other than a small business firm or a nonprofit organization are set forth in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1. In order to advise prospective contractors of those procedures, the contracting officer shall insert the provision at 1852.227-71, Requests for Waiver of Rights to Inventions, in all solicitations that include the clause at 1852.227-70, New Technology.

(e) *Designation of New Technology Representative and Patent Representative.* The contracting officer shall insert the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses prescribed in paragraph (a) or (b) of this section. It may also be inserted, upon consultation with the installation's Patent Counsel, in solicitations and contracts using another patent rights clause in accordance with paragraph (c) of this section.

(f) *Patent rights clause for subcontracts.* The contracting officer shall insert the clause at 1852.227-73, Patent Rights Clause for Subcontracts, in all solicitations and contracts that include the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form).

(g) *Solicitation provision.* The contracting officer shall insert the provision at 1852.227-84, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States, its possessions, or Puerto Rico when the eventual awardee may be a small business or a nonprofit organization but the matter is uncertain at the time of solicitation (e.g., the procurement is not a set-aside and is not sole source to a large business).

[54 FR 28272, July 5, 1989, as amended at 54 FR 39372, Sept. 26, 1989; 55 FR 27089, June 29, 1990]

1827.374 Procedures.

1827.374-1 General.

(a) *Contractor appeals of exceptions.* In any NASA contract with other than a small business firm or nonprofit organization, the NASA Patent Waiver Regulations, 14 CFR part 1245, Subpart 1, shall apply. In any contract with a small business firm or nonprofit organization, FAR 27.304-1(a) shall apply.

(b) *Greater rights determinations.* In any NASA contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.372(b)), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1. In any contract with a small business firm or a nonprofit organization, FAR 27.304-1(a) shall apply.

(c) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, shall apply for any invention made in the performance of work under any NASA contract with other than a small business firm or a nonprofit organization. For inventions made under a contract with a small business firm or a nonprofit organization, FAR 27.304-1(b) shall apply.

(d) *Government assignment to contractor of rights in Government employees' inventions.* FAR 27.304-1(c) shall apply.

(e) *Additional requirements.* See 1827.373(a).

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.372(h)(2)) shall be in accordance with the procedures of 14 CFR part 1245, subpart 1, for subject inventions made and reported under any NASA contract with other than a small business firm or a nonprofit organization, and in accordance with FAR 27.304-1(e) for subject inventions made and reported under any contract with a small business firm or a nonprofit organization. The contractor's right to appeal a NASA determination to revoke or modify any such license shall be in accordance with 14 CFR part 1245, subpart 2, Licensing of NASA Inventions.

(g) *Exercise of march-in rights.* (1) With respect to inventions made in the performance of work under any NASA contract with other than a small business firm or a nonprofit organization, the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

(2) With respect to inventions made under any contract with a small business firm or a nonprofit organization, FAR 27.304-1(g) shall apply.

(h) *Licenses and assignments under contracts with nonprofit organizations.* FAR 27.304-1(h) shall apply. NASA's approving official for any assignment requested under FAR 27.304-1(h) is the Associate General Counsel (Intellectual Property). Contractors' requests should be made to the Patent Representative designated in accordance with 1827.373(e) and forwarded, with recommendation, to the Associate General Counsel (Intellectual Property) for decision.

[54 FR 28272, July 5, 1989, as amended at 54 FR 39373, Sept. 26, 1989]

1827.374-2 Contracts placed by or for other Government agencies.

FAR 27.304-2 shall apply. (See also 1827.373(c)(2).)

[54 FR 39373, Sept. 26, 1989]

1827.374-3 Contracts for construction work or architect-engineer services.

(a) If a NASA contract for construction work or architect-engineer services with other than a small business firm or a nonprofit organization has as a purpose the performance of experimental, developmental, or research work, or test and evaluation studies involving such work, and the contract calls for or can be expected to involve the design of a Government facility or of novel structures, machines, products, materials, processes, or equipment (including construction equipment), the contract shall include the clause prescribed at 1827.373(b) except as provided in FAR 27.304-3(b).

(b) For all other contracts for construction work or architect-engineer services, FAR 27.304-3 shall apply.

1827.374-4 Subcontracts.

(a) The policies and procedures in this subpart apply to all contracts at any tier. Hence, unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(1) The clause at 1852.227-70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.373(b)(1) through (6).

(2) The clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), modified in accordance with 1827.373(a), in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, or research work.

(b) Whenever a prime contractor or a subcontractor considers it inappropriate to include one of the clauses discussed in paragraph (a) of this section, in a particular subcontract, or a subcontractor refuses to accept the clause, the matter shall be resolved by the contracting officer in consultation with the installation's Patent Counsel.

(c) Contractors and subcontractors may not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from such subcontracts.

1827.374-5 Appeals.

FAR 27.304-5 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

1827.375 Administration of the patent rights and new technology clauses.

1827.375-1 New technology and patent rights follow-up.

(a) It is important that the Government and the contractor know, protect, and exercise their rights in inventions, discoveries, improvements, and innovations made in the performance of work under NASA contracts in order to ensure their expeditious availability to the public; foster commercial use; enable the Government, contractor, and public to avoid unnecessary payment of royalties; and defend themselves against claims and suits for infringement. To attain these ends, contracts having the clause at 1852.227-70, New Technology, the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), or any other patent rights clause (hereinafter all collectively referred to as "the clause" unless otherwise indicated), should be so administered that—

(1) Reportable items and subject inventions are identified, disclosed, and reported as required by the clause, and requests for waiver of title or election of title, when appropriate, are timely made;

(2) The rights of the Government in reportable items and subject inventions are established;

(3) Where patent protection is appropriate, patent applications are timely filed and prosecuted;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of reportable items and subject inventions is achieved.

(b)(1) For each contract containing the clause, the contracting officer shall designate representatives (hereinafter referred to as the "New Technology Representative" and the "Patent Representative"; see 1827.373(e)) to administer the clause, protect the Government's rights, and take other actions in relation thereto. The New Technology Representative shall be the Technology Utilization Officer or the staff member (by titled position) having cognizance of technology utilization matters for the NASA installation concerned. The Patent Representative shall be the Patent Counsel (by titled position) having cognizance of patent matters for the NASA installation concerned. Designation of these representatives in the contract is made by use of the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative.

(2) The contracting officer shall—(i) Furnish the New Technology Representative a copy of each contract (and modifications thereto) containing the clause, and copies of the final technical report, interim technical progress reports, and other pertinent material provided under the contract, unless the New Technology Representative indicates otherwise;

(ii) Notify the New Technology Representative as to which NASA installation organizational element has technical cognizance of the contract; and

(iii) Furnish the Patent Representative a copy of each contract (and modifications thereto) containing the clause, and copies of the final technical report, interim progress reports, and other pertinent material provided under the contract, unless the Patent Representative indicates otherwise.

(3) The New Technology Representative and the Patent Representative shall:

(i) Maintain complete files of correspondence and other actions involving their respective administration of the clause; and

(ii) Furnish copies of documents appropriate for inclusion in the general contract files to the contracting officer.

(4) If a subject invention is made under funding agreements of more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administering the rights of the Government in the invention.

1827.375-2 Follow-up by contractor.

(a) *Contractor procedures.* (1) Each NASA contractor other than a small business firm or a nonprofit organization shall establish and maintain active and effective procedures to ensure that reportable items are promptly identified, reported, and disclosed in order to meet the requirements of the clause. These procedures must include the maintenance of:

(i) Laboratory notebooks or equivalent records and any other records reasonably necessary to document the conception and/or first actual reduction to practice of reportable items; and

(ii) Records showing that the procedures for identifying and disclosing reportable items are followed.

Upon request, the contractor shall furnish the contracting officer or a designated representative, for evaluation and a determination as to their effectiveness, a description of the procedures.

(2) In order to ensure adequate understanding of and commitment to the reporting requirements of the New Technology clause, prospective contractors under any NASA contract with an estimated cost of $2,500,000 or more (or a lesser dollar amount where considered appropriate) that contains the clause may be required to submit for approval a detailed plan for new technology reporting (see 1835.003-1).

(b) *Contractor reports.* (1) During the period of performance of each contract or subcontract, the contractor or subcontractor is required to submit to the New Technology Representative (or any other representative designated by the contracting officer) all disclosures of reportable items and subject inventions, interim reports, subcontract identification, and other information in the manner required by the clause, and upon the completion of the work under the contract or subcontract, the final report if required by the clause.

(2) Reporting of reportable items as required by the New Technology clause promptly and before the completion of contract work, and prompt submission of the final report upon completion of contract work, will aid new technology clearance. Timely submission of annual interim reports, where contracts cover a period of more than one year, will also facilitate clause administration and expedite final clearance.

1827.375-3 Follow-up by Government.

(a) The New Technology Representative shall review, as necessary, the technical progress of work performed under the contract to ascertain whether the contractor and its subcontractors are complying with the clause's reporting requirements. This effort should be directed primarily toward contracts and subcontracts that, by the nature of the work to be performed or the dollar amounts involved, are likely to produce reportable items or subject inventions of significant quantity or quality, or toward contracts and subcontracts under which there is reason to believe that the contractors may not be complying with their contractual obligations. Other contracts and subcontracts should be spot-checked when feasible. These follow-up activities may include—

(1) Reviewing the contractor's technical reports;

(2) Requesting the Patent Representative to check sources for patents issued to the contractor in fields related to the contractor's Government contracts;

(3) Interviewing contractor personnel regarding work under the contract, observing the work on-site, and inspecting laboratory notebooks and other contractor records related to work under the contract, to the extent authorized by the clause;

(4) Interviewing agency technical personnel concerning novel developments in contracts under their cognizance; and

(5) Ensuring that the contractor is timely in reporting reportable items, disclosing subject inventions, and submitting interim reports, subcontract identification, and final reports as required by the clause.

(b) The New Technology Representative shall forward to the Patent Representative copies of all contractors' and subcontractors' written reports of reportable items and disclosures of subject inventions, and a copy of the written statement, if any, submitted with the report of the reportable item.

The New Technology Representative shall consult with the Patent Representative whenever a question arises as to whether a given reportable item is to be considered a subject invention and whether it was made in the performance of work under the contract. All correspondence relating to:

(1) Inventions and waivers under the New Technology clause and

(2) Election of title under the Patent Rights—Retention by the Contractor (Short Form) clause

shall also be promptly forwarded to the Patent Representative.

(c) The Patent Representative shall review each reportable item to ascertain whether it is to be considered a subject invention, obtain any determinations required by paragraph (b) of the New Technology clause, and notify the contractor. As to any subject invention, the Patent Representative shall:

(1) Ensure that the contractor has provided sufficient information to protect the Government's rights and interests in it and to permit the preparation, filing, and prosecution of patent applications,

(2) Make determinations of inventorship, and

(3) Ensure the preparation of instruments establishing the Government's rights.

The Patent Representative shall also, as necessary, conduct selected reviews of the nature set forth in paragraph (a) of this section to ensure that subject inventions are identified, adequately documented, and timely reported or disclosed.

(d) Upon receipt of any final report required by the clause, and upon determination that the contract work is complete, the New Technology Representative shall determine whether the contractor has complied with the clause's reporting requirements. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence, and forward the certification to the contracting officer. Such determinations generally will require consultation with cognizant technical personnel.

(e) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the New Technology clause. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the New Technology clause and take corrective action as appropriate. However, no action may be taken by either the New Technology Representative or the Patent Representative that would:

(1) Constitute a final decision under the Disputes clause,

(2) Involve any change or increase in the work required to be performed under the contract that is inconsistent with any right of appeal provided in FAR 27.304-5 or 14 CFR 1245.1, or

(3) Otherwise be outside the scope of obligations imposed upon the contractor by the contract.

(f) If it is determined that a contractor or subcontractor does not clearly understand the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation should ordinarily be conducted to explain these rights and obligations (see FAR subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on inventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the contracting officer or a representative may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see FAR 4.801(c)(3)).

(g) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence, as specified in paragraph (d) of this section.

1827.375-4 Conveyance of invention rights acquired by the Government.

(a) When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227-70, New Technology, a determination of title is to be made in accordance with section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(a)), and reflected in appropriate instruments executed by NASA and forwarded to the contractor.

(b) When the Government acquires the entire right to, title to, and interest in an invention other than pursuant to paragraph (a) of this section, FAR 27.305-4 shall apply.

1827.375-5 Publication and release of invention disclosures.

FAR 27.305-5 shall apply.

1827.376-6 Licensing of background rights to third parties.

FAR 27.306 shall apply.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.

(a) *Alternate definition of limited-rights data.* When the clause at FAR 52.227-14, Rights in Data—General, is used with Alternate I, but without Alternate II or Alternate III, all data qualifying as limited-rights data as defined in Alternate I may be withheld from delivery, and any study or report delivered under the contract will contain only unlimited rights data that may be disseminated by NASA. If delivery of withholdable data is required, Alternate II or Alternate III, as applicable, may be used, but any data subject to these alternates will be delivered under the applicable limited-rights or restricted-rights notices and therefore may not be disclosed outside NASA except to the extent permitted by these notices (see FAR 27.404 (d) and (e)).

(b) *Protection of limited-rights data specified for delivery.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding any questions concerning the delivery of limited-rights data and/or the use of Alternate II that may arise:

(1) From an offeror's response to the provision at FAR 52.227-15, Representation of Limited-Rights Data and Restricted Computer Software, or

(2) During negotiations.

(c) *Protection of restricted computer software specified for delivery.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding any questions concerning the delivery of restricted computer software and/or the use of Alternate III that may arise:

(1) From an offeror's response to the provision at FAR 52.227-15, Representation of Limited-Rights Data and Restricted Computer Software, or

(2) During negotiations.

(d) *Copyrighted data.* (1) The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before granting in accordance with FAR 27.404(f)(1)(ii) permission for a contractor to establish claim to copyright subsisting in data, other than computer software, first produced under the contract. For copyright of computer software first produced under the contract, see paragraph (e) of this section.

(2) Obtaining a copyright license of a different scope than set forth in paragraph (c)(1) or (2) of the clause at 52.227-14, Rights in Data—General, for any contract or class of contracts in accordance with either FAR

27.404(f)(1)(iv) or FAR 27.404(f)(2)(i), is permitted only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(e) *Release, publication, and use of data.* (1) The NASA paragraph (d)(3) (see 1827.409(e)) is to be added to paragraph (d) of the clause at FAR 52.227-14, Rights in Data—General, whenever that clause is used in any contract other than one for basic or applied research with a university or college. The paragraph provides that the contractor may not establish claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. This is in accordance with NASA policy and procedures for the distribution of computer software developed by NASA and its contractors, as set forth in NASA Management Instruction 2210.2, NASA Scientific and Technical Information Handbook.

(2) The contracting officer may, in consultation with the installation's Patent or Intellectual Property Counsel, grant the contractor permission to copyright, publish, or release to others computer software first produced in the performance of a contract if—

(i) The contractor has identified an existing commercial computer software product line or proposes a new one and states a positive intention of incorporating any computer software first produced under the contract into that line, either directly itself or through a licensee;

(ii) The contractor has made, or will be required to make, significant contributions to the development of the computer software by co-funding or by cost-sharing, or by contributing resources (including but not limited to agreement to provide continuing maintenance and update of the software at no cost for Governmental use); or

(iii) The concurrence of a cognizant official named in NASA Management Instruction 2210.2 or the Director, Technology Utilization Division, NASA Headquarters, has been obtained.

(3) The contractor's request for permission in accordance with paragraph (e)(1) of this section may be made either before contract award or during contract performance. Any permission granted in accordance with paragraph (e)(2)(i) or (ii) of this section, shall be by express contract provision (or amendment) overriding paragraph (d)(3) of this section, rather than by deleting paragraph (d)(3) from the clause. Any permission granted in accordance with paragraph (d)(2)(iii) of this section may be either by deleting paragraph (d)(3) or by special contract provision, as appropriate. Any contract provision relating to any permission granted in accordance with paragraph (2)(i) or (2)(ii) of this section may contain appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a reasonable time and/or that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government itself to obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor. Also, when any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in paragraph (c)(1) of the clause (see also FAR 27.404(f)(1)) and without any obligation of confidentiality on the part of the Government, unless in accordance with paragraph (e)(2)(ii) of this section the contributions of the Contractor may be considered "substantial" for the purposes of FAR 27.408 (i.e., approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(f) *Unauthorized marking of data.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before taking any action regarding unauthorized markings of data under paragraph (e) of the clause at FAR 52.227-14, Rights in Data—General.

(g) *Omitted or incorrect notices.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before agreeing to add or correct, or adding or correcting, any markings on data under paragraph (f) of the clause at FAR 52.227-14, Rights in Data—General.

1827.405 Other data rights provisions.

(a) *Acquisition of existing computer software.* (1) When the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, is used, NASA paragraph (e) (see 1827.409(f)) may be added to receive updates, correction notices, consultation information, and other similar information on any computer software delivered under the purchase order or contract by authorizing the NASA contracting officer or the NASA contract technical representative/user to sign any vendor-supplied agreements, registration forms, or cards and return them directly to the vendor. This procedure is to facilitate receiving applicable information and is not intended to alter any NASA rights or obligations set forth in the clause or elsewhere in the contract. The price, schedule, and other terms, if any, are to be specified in the purchase order or contract.

(2) When the clause at 52.227-19, Commercial Computer Software—Restricted Rights, is used, NASA paragraph (f) (see 1827.409(g)) may be added to incorporate applicable portions of the contractor's standard commercial license or lease agreement into the purchase order/contract to the extent consistent with the clause, Federal laws, standard industry practices, and the FAR.

(3) Instead of the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights (either with or without additional paragraphs (e) and/or (f)), the contracting officer may use the NASA clause at 1852.227-86, Commercial Computer Software—Licensing. This clause is particularly useful when there are multiple computers on which the computer software may be used, but simultaneous use is prohibited or restricted in the vendor/contractor standard commercial software license to be incorporated in and made part of the purchase order/contract. It also automatically adopts terms in the vendor/contractor standard commercial license that may be less restrictive than those set forth in the clause at FAR 52.227-19 without having to customize that clause or modify the purchase order/contract. In addition, it enables the vendor/contractor's standard marking to be used without requiring additional markings on the software.

(b) *Contracts awarded under the Small Business Innovative Research (SBIR) Program.* If, during the performance of an SBIR contract (Phase I or Phase II), the need arises for NASA to obtain delivery of restricted computer software as defined in the clause at FAR 52.227-20, Rights in Data—SBIR Program, and the contractor agrees to such delivery, the restricted computer software may be acquired with restricted rights by modification of the contract or under an agreement incorporated in and made part of the contract, using the restricted rights set forth in FAR 27.404(e) and the related restrictions as a guide.

1827.406 Acquisition of data.

(a) *General.* When specifying data delivery requirements in accordance with FAR 27.406(a), requirements for delivering technical data relating to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which they are being procured. Normally, a vendor's manuals for installation, operation, or maintenance and repair and/or form, fit, and function data are adequate for most needs.

(b) *Reports of work.* (1) In addition to any other data delivery requirements that may be set forth in the contract in accordance with FAR 27.406, NASA contractors normally should be required to furnish reports of work performed under research and development contracts (fixed-price and cost reimbursement) and also may be required to furnish them in cost-reimbursement supply contracts if they are considered desirable for monitoring contract performance. This purpose shall be achieved by including the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(i) *Monthly progress reports.* The contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They shall include a quantitative description of overall progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period. (Normally, this requirement should not be used in contracts with nonprofit organizations.)

(ii) *Quarterly progress reports.* The contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract work. Sufficient diagrams, sketches, curves, photographs, and drawings shall be included to convey the intended meaning.

(iii) *Final report.* The contractor shall submit a final report that documents and summarizes the results of the entire contract work, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(iv) *Report Documentation Page.* The contractor shall include a completed Report Documentation Page (NASA Form 1626) as the final page of each report submitted in accordance with subdivisions (b)(1) (i) through (iii) of this section.

(v) Submission. The required numbers of copies of the reports specified in subdivisions (b)(1) (i) through (iii) of this section shall be submitted to the technical monitor of the contract in the absence of other instructions from the requesting activity. In addition, a reproducible copy and a printed, or reproduced, copy of the reports shall be sent to the NASA Scientific and Technical Information Facility, Attn: Accessioning Department, P.O. Box 8757, Baltimore/Washington International Airport, MD 21240.

(2) The contracting officer shall consider the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the entire contract. The data delivery requirements section of the contract shall also list other data to be delivered under the contract and provide, as necessary, specific instructions regarding delivery, submission dates, report numbering, numbers of copies to be submitted, distribution lists, and any other information to ensure appropriate distrioution of the required reports of work.

1827.407 Rights to technical data in successful proposals.

NASA may obtain rights in technical data (but not commercial and financial information) contained in a solicited or unsolicited proposal upon which a contract award is based, only by specific agreement with the prospective contractor in accordance with the procedures of FAR 27.407 and the clause at FAR 52.227-23, Rights to Proposal Data (Technical).

[54 FR 39373, Sept. 26, 1989]

1827.408 Cosponsored research and development activities.

The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before limiting the acquisition of or acquiring less than unlimited rights to any data developed under contracts involving cosponsored research and development activities in accordance with FAR 27.408.

1827.409 Solicitation provisions and contract clauses.

(a) Alternate I is to be used with the FAR clause at 52.227-14, Rights in Data—General, only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel. An example of its use is where the principal purpose of the contract (such as a contract for basic or applied research) does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or under any anticipated follow-on contracts relating to the same subject matter). Other examples include socioeconomic studies or reports, educational material, health and safety information, management analyses, and related matters the preparation of which may involve confidential business information qualifying as limited-rights data as defined by Alternate I.

(b) The specific purposes for the release of limited-rights data outside the Government set forth in subdivisions (d)(1) (i) through (v) of FAR 27.404 are to be added to the Limited-Rights Notice of subparagraph (g)(2) of Alternate II of the clause at FAR 52.227-14, Rights in Data—General. However, the contracting officer may, upon consultation with the installation's Patent or Intellectual Property Counsel, make deletions from the specific purposes listed. If all are deleted, the word "None" must be inserted in the notice. Additions to those specific purposes listed may be made only with the approval of the installation Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(c) The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding the acquisition of restricted computer software with greater or lesser rights than those set forth in Alternate III of the clause at FAR at 52.227-14, Rights in Data—General, in accordance with FAR 27.404(e)(2). Where it is impractical to actually modify the notice of Alternate III, this may be done by express reference in a separate clause in the contract or by a collateral agreement that addresses the change in the restricted rights.

(d) Use of Alternate IV with the clause at FAR 52.227-14, Rights in Data—General, in any contract other than a contract for basic or applied research to be performed solely by a college or university on campus (but not for the management or operation of Government facilities) is permitted only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(e) In accordance with 1827.404(e)(1), the contracting officer shall add subparagraph (3) as set forth in 1852.227-14 to paragraph (d) of the clause at FAR 52.227-14, Rights in Data—General, except in solicitations and contracts for basic or applied research with universities or colleges.

(f) In accordance with 1827.405(a)(1), the contracting officer shall add paragraph (e) as set forth in 1852.227-19(a) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

(g) In accordance with 1827.405(a)(2), the contracting officer shall add paragraph (f) as set forth at 1852.227-19(b) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract.

(h) In accordance with 1827.405(a)(3), the contracting officer shall use the clause at 1852.227-86, Commercial Computer Software—Licensing, in lieu of the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is considered appropriate for the acquisition of existing computer software in accordance with FAR 27.405(b)(2).

[54 FR 28272, July 5, 1989, as amended at 55 FR 27089, June 29, 1990]

Subpart 1827.6—Foreign License and Technical Assistance Agreements

SOURCE: 54 FR 39373, Sept. 26, 1989, unless otherwise noted.

1827.670 Space Station Freedom technical data.

1827.670-1 Policy.

NASA and its contractors shall comply with the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130 (Subchapter M) with respect to the transfer of technical data to any International Space Station Freedom Program multilateral partner. When authorized by the Directive entitled, "Space Station Level I Directive—Subject: Space Station Technology Transfer Control—dated March 21, 1989", certain technical data in support of NASA's International Space Station Freedom Program may be exported to a foreign recipient specified in writing by the NASA contracting officer. Contracting officers, or designees, will assure that any transfer of data to a foreign recipient will be in compliance with the Directive.

1827.670-2 Solicitation provision and contract clause.

The contracting officer shall insert the clause at NFS 1852.227-87, Transfer of Technical Data Under Space Station International Agreement, in all solicitations, contracts, and purchase orders in support of Space Station Freedom Program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (Subchapter M) in accordance with the "Space Station Level I Directive—Subject: Space Station Technology Transfer Control—dated March 21, 1989."

PART 1828—BONDS AND INSURANCE

Sec.
1828.001 Definitions.

Subpart 1828.1—Bonds

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1828.370 Fixed-price contract clauses.
1828.371 Clause for interparty waiver of liability during STS operations.
1828.372 Clause for minimum insurance coverage.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28281, July 5, 1989, unless otherwise noted.

1828.001 Definitions.

Protected Space Operations means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space related to Space Station. It includes, but is not limited to research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services; and all activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. The term *Protected Space Operations* also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. Protected Space Operations excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

STS Operations means all Space Transportation System (STS) activity, all payload activity, and all tangible personal property (including ground support, test, training, and simulation equipment) related to STS or payload activity. The term also includes research, design, development, test, manufacture, assembly, integration, transportation, or use of any materials related to the above noted activities or property, and performance of any services related to the above factors.

Subpart 1828.1—Bonds

1828.101 Bid guarantees.

1828.101-70 NASA solicitation provision.

In accordance with FAR 28.101, the contracting officer shall insert the provision at 1852.228-73, Bid Bond, in construction solicitations where offers are expected to exceed $25,000, and a performance bond or a performance and payment bond is required. The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed $3 million. This provision may be used in other than construction procurements if the requirements of FAR 28.103 have been complied with.

1828.102 Performance and payment bonds for construction contracts.

1828.102-1 General.

NASA contractors that, in the course of contract performance, will acquire by subcontract construction work determined by NASA to be subject to the Miller Act, but that are not required under FAR 28.102 to furnish Miller Act bonds, shall be required to obtain performance and payment bonds from their subcontractors (see 1828.106-1). The contracting officer shall establish the penal amount in accordance with FAR 28.102-2.

1828.102-70 Solicitation provision.

In accordance with FAR 28.102, except as provided therein, the contracting officer shall insert a provision substantially as stated at 1852.228-74, Payment and Performance Bonds, in construction solicitations where offers are expected to exceed $25,000. The penal amount of the performance bond may be decreased in accordance with FAR 28.102-2(a). The contracting officer may change the word "may" in the first sentence of subparagraphs (a)(2) and (b)(2) to "shall" if the procurement contemplates options or additive items (see 1836.303-70).

1828.106 Administration.

1828.106-1 Bonds and bond related forms.

When performance or payment bonds are required from subcontractors under NASA construction contracts (see 1828.102-1), the bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

1828.106-6 Furnishing information.

(a) The contracting officer is designated, in accordance with FAR 28.106-6(c), to furnish a certified copy of the payment bond and the contract for which it was given upon receipt of an appropriate affidavit from the requestor.

(b) The contracting officer shall obtain the concurrence of the Office of Chief Counsel before releasing any documents.

Subpart 1828.3—Insurance

1828.305 Overseas workers' compensation and war-hazard insurance.

(a) *Waiver of Defense Base Act.* Applications for waivers under FAR 28.305(d) shall be submitted to the Administrator through the Assistant Administrator for Procurement. The application shall include–

(1) The contractor's name;

(2) The contractor's business mailing address;

(3) The contract number;

(4) The date of award;

(5) The geographic location where the contract will be performed;

(6) The name of the insurance company providing the Defense Base Act coverage;

(7) The nationality of the employees to whom the waiver is to apply; and

(8) The reason for the waiver.

(b) *When the Defense Base Act is waived.* (1) The decision under FAR 28.305(e) as to whether (i) the costs of the liability or (ii) the reasonable costs of insurance against it shall be allowed as a cost under the contract may be made by the Assistant Administrator for Procurement or by a designee.

(2) The Schedule of each contract containing the clause at 1852.228-77, Reimbursement for War-Hazard Losses, shall contain an estimated cost for war-hazard losses, derived in accordance with paragraph (b)(2)(i) of this section, and a statement similar to that set forth in paragraph (b)(2)(ii) of this section:

(i) The estimated cost for war-hazard losses shall be based on estimates arrived at in the light of experience, taking into account the number of the contractor's employees subject to protection for war-hazard risks, the level of benefits applicable to them, their location, and the nature of the risks to which they are exposed. The amount allotted to the contract shall initially be kept as small as reasonably feasible. As reports are received indicating any need to increase the allotment to the contract, they shall be evaluated and the allotment increased as necessary. When negotiating for the inclusion in the contract of provisions applicable to war-hazard risks, the contracting officer may include provisions concerning the types of foreign nationals employed by the contractor and the level of benefits applicable to them, and other pertinent provisions relating to the manner in which the program will function to the benefit of all concerned. Advance agreements under FAR 31.109 may also be advantageous with respect to the levels of proof considered acceptable to justify the contractor's commencing payments and being reimbursed for them before the contractor is able to settle its obligation.

(ii) "The portion of this contract providing for the contractor to afford protection to its employees and subcontractors to their employees against war-hazard risks (see the clauses at 52.228-4 of the Federal Acquisition Regulation (FAR) and 1852.228-77 of the NASA FAR Supplement) is on a cost-reimbursement, no-fee basis, notwithstanding the basis of the remainder of the contract."

1828.307 Insurance under cost-reimbursement contracts.

1828.307-2 Liability.

(a) In accordance with FAR 28.307-2(b)(2), the special circumstances requiring property damage liability insurance are those where (otherwise, prior approval for purchase of property damage liability insurance must be obtained from the Assistant Administrator for Procurement)—

(1) A commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by the contractor in the course of its commercial operations; or

(2) The contractor is engaged in the handling of high explosives or in extra hazardous research and development activities undertaken in populated areas.

(b) The Government normally will assume the risk of a contractor's uninsured third-party liability to the extent provided for by the clause at FAR 52.228-7, Insurance—Liability to Third Persons.

1828.307-70 Insurance of industrial facilities.

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the installation concerned, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the manner and to the same extent as required in FAR 28.307-2.

1828.309 Contract clauses for workers' compensation insurance.

The contracting officer shall insert the clause at 1852.228-77, Reimbursement for War-Hazard Losses, in all solicitations and contracts containing the clause at FAR 52.228-4, if the Assistant Administrator for Procurement determines that the contractor shall not purchase insurance against the assumed liability to the waived employees and their beneficiaries (see 1828.305(b)).

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311-2 Contract clause.

1828.311-270 NASA contract clause.

The contracting officer shall insert the clause at 1852.228-71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228-70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of damage to, or loss or destruction of, aircraft as provided by the clause at 1852.228-70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. If it is determined not to assume this risk, the clause at 1852.228-70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228-71, Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228-70 is used, the term "Contractor's premises" shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during and for the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clause for interparty waiver of liability during STS operations.

The contracting officer shall insert the clause at 1852.228-72, Interparty Waiver of Liability During STS Operations, in all NASA prime contracts, new-work modifications or extensions to existing contracts, and solicitations of $100,000 or more when the work is to be performed in support of STS operations (see 1828.001). In addition, the contracting officer shall insert the clause in all contracts involving STS operations containing one of the indemnifications under Pub. L. 85-804 clauses prescribed at 1850.403-3. At the contracting officer's discretion, this clause may be used in contracts, new-work modifications or extensions to existing contracts, and solicitations under $100,000 involving STS operations in appropriate circumstances, such as when the value of contractor property on a Government installation used in the performance of the contract is significant.

1828.372 Clause for minimum insurance coverage.

In accordance with FAR 28.306(b) and 28.307, the contracting officer may insert a clause substantially as stated at 1852.228-75, Minimum Insurance Coverage, in fixed-price solicitations and contracts requiring performance on a government installation and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular procurement.

1828.373 Clause for cross-waiver of liability for Space Station activities.

(a) The contracting officer shall insert the clause at 1852.228-76, Cross-Waiver of Liability for Space Station Activities, in all NASA prime contracts, new-work modifications or extensions to existing contracts, and solicitations of $100,000 or more when the work is to be performed in support of Protected Space Operations (see 1828.001). The contracting officer shall modify all other such existing contracts of $100,000 or more as soon as practicable to include the clause.

(b) The contracting officer may insert the clause at 1852.228-76 in contracts, new-work modifications or extensions to existing contracts and solicitations under $100,000 when the work is performed in support of Protected Space Operations. The use of the clause would be appropriate in contracts under $100,000, particularly when it is likely that such a contractor or subcontractor will have its valuable property exposed to risk of damage caused by other Space Station participants involved in Protected Space Operations.

PART 1829—TAXES

Subpart 1829.1—General

Sec.

1829.101 Resolving tax problems.

Subpart 1829.2—Federal Excise Taxes

1829.203 Other Federal tax exemptions.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28283, July 5, 1989, unless otherwise noted.

Subpart 1829.1—General

1829.101 Resolving tax problems.

(a) The Office of General Counsel (Code G) shall (1) represent NASA in all negotiations under FAR Part 29 and (2) keep the Assistant Administrator for Procurement fully informed on their status.

(b) Communications with the Department of Justice for representation or intervention in proceedings concerning taxes shall be made only by the General Counsel.

(c) Matters involving foreign taxes requiring the assistance of other executive departments shall be forwarded to the General Counsel for appropriate action.

(d) Tax problems that cannot be solved readily by reference to FAR part 29 shall be forwarded to the General Counsel through the installation's Office of Chief Counsel. The forwarding of tax problems to the General Counsel is particularly important when—

(1) The amount of tax actually or potentially involved is substantial;

(2) The legal incidence of a tax appears to be upon the United States or its property, a specific exemption pertinent to the transaction appears to exist, or a State or local tax appears to have a direct effect upon a transaction in interstate commerce;

(3) Judicial or administrative action against a contractor is threatened;

(4) The imposition or potential imposition of a tax is the result of an amendment of a tax law or a change of position by the tax authorities; or

(5) The possibility exists of obtaining refunds of taxes previously paid.

(e) Regarding tax problems, the initiating office or intervening offices shall forward the following material to the General Counsel:

(1) A comprehensive statement of pertinent facts, including documents and correspondence.

(2) A copy of the contract.

(3) A thorough review of the legal issues involved and recommended action.

(4) If appropriate, a statement of the problem's effects on procurement poli-

cies and procedures, with recommendations.

(f) Copies of tax-related correspondence shall be sent to the Assistant Administrator for Procurement.

Subpart 1829.2—Federal Excise Taxes

1829.203 Other Federal tax exemptions.

(a) The Assistant Administrator for Procurement has obtained a permit from the Bureau of Alcohol, Tobacco, and Firearms (Treasury Department) enabling NASA and its contractors to purchase spirits (e.g., specially denatured spirits) tax-free for nonbeverage Government use. Installations can obtain copies of the permit from the Procurement Policy Division (Code HP) at NASA Headquarters.

(b) When purchasing spirits for use by NASA personnel, the contracting officer shall attach a copy of the permit to the contract. Upon receipt of the spirits, the permit shall be returned to the contracting officer unless future orders are anticipated.

(c) When a NASA contractor requires spirits to perform a NASA contract, the contracting officer shall furnish the contractor a copy of the permit to provide its vendor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated. In any event, the permit shall be returned upon completion of the contract.

(d) To comply with 26 U.S.C. 5271(g), the procurement officer shall post a copy of the permit for inspection.

PART 1830—COST ACCOUNTING STANDARDS

Subpart 1830.1—General

Sec.
1830.101 Cost Accounting Standards.

Subpart 1830.2—CAS Program Requirements

1830.201-5 Waiver.

Subpart 1830.70—Facilities Capital Employed for Facilities in Use or for Facilities Under Construction

1830.7000 General.
Sec.
1830.7001 Facilities capital employed for facilities in use.
1830.7001-1 Policy.
1830.7001-2 Definitions, measurement, and allocation.
1830.7001-3 Estimating business unit facilities capital and cost of money.
1830.7001-4 Contract facilities capital estimates.
1830.7001-5 Pre-award facilities capital applications.
1830.7001-6 Post-award facilities capital applications.
1830.7001-7 Administrative procedures.
1830.7002 Facilities capital employed for facilities under construction.
1830.7002-1 Policy.
1830.7002-2 Definitions.
1830.7002-3 Measurement.
1830.7002-4 Composition and allocation of costs.
1830.7002-5 Limitations.
1830.7002-6 Pre-award capital employed application.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28284, July 5, 1989, unless otherwise noted.

Subpart 1830.1—General

1830.101 Cost Accounting Standards.

(a) To ensure uniform administration of CAS requirements, NASA has determined to consider all of its contracts as "national defense" contracts for CAS purposes, whether or not they meet the definition of "national defense" in FAR 2.101.

(b) [Reserved]

Subpart 1830.2—CAS Program Requirements

1830.201-5 Waiver.

After the contracting officer has made the determination required by FAR 30.201-5(a), the procurement officer shall forward all requests for waiver of CAS requirements to the Assistant Administrator for Procurement (Code HC) for approval.

Subpart 1830.70—Facilities Capital Employed for Facilities in Use or for Facilities Under Construction

1830.7000 General.

Pending issuance of FAR coverage, the NASA Procurement Regulation (NPR) (48 CFR 1803.1300) shall continue to govern facilities capital employed for facilities. This subpart is substantively identical to the NPR. It is reproduced here with current textual citations and updated cross-references for the user's convenience.

1830.7001 Facilities capital employed for facilities in use.

1830.7001-1 Policy.

It is the policy of the Government to recognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the performance of defense contracts. The recognition of contractor investments in the development of the profit objective will result in a profit objective based on a combination of effort, risk, and investment factors.

1830.7001-2 Definitions, measurement, and allocation.

Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital," establishes criteria for the measurement and allocation of the cost of capital committed to facilities as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB-CMF with instructions. This Section adopts the techniques of CAS 414 as the approved method of measurement and allocation of facilities cost of money to overhead pools at the business unit level and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration matters. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria, and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this subpart from the same data bank and programs.

1830.7001-3 Estimating business unit facilities capital and cost of money.

The method of estimating the business unit facilities capital and cost of money utilizes the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB-CMF. Three elements are required to develop cost of money overhead allocation base date, and the interest rate promulgated by the Secretary of the Treasury pursuant to Pub. L. 92-41. These elements are discussed below.

(a) *Business unit facilities capital data.* (1) The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of:

(i) The net book value of facilities recorded on the accounting records of the business unit,

(ii) The capitalized value of leases (see FAR 31.205-2 and FAR 31.205-36), and

(iii) The net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit under the provisions of CAS 403.

(2) Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (see FAR 31.205-17).

(b) *Overhead allocation bases.* The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates

CMFs should be submitted and evaluated as part of the proposal.

(c) *Interest rate.* For purpose of projection, the most recent interest rate promulgated by the Secretary of the Treasury will be used as the cost of money rate in Column 1 of Form CASB-CMF and the same rate must be used on the DD Form 1861 to determine contract facilities capital employed. Where actual costs are used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred costs will be recognized by development of a composite rate.

(d) *Determination of final cost of money.* CMFs estimated following the above procedures are used to develop the facilities investment base used in forward pricing. Actual CMFs are required when it is necessary to determine final allowable costs for cost settlement and/or repricing following CAS 414 and FAR 31.205-10.

1830.7001-4 Contract facilities capital estimates.

(a) After the appropriate Forms CASB-CMF have been analyzed and CMFs have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861 "Contract Facilities Capital and Cost of Money" has been provided for this purpose and, when properly completed, becomes a connecting link between the Forms CASB-CMF and any applicable agency structured approach to determination of profit or fee objectives. An evaluated contract cost breakdown reduced to the contracting officer's pre-negotiation cost objective must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Forms CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB-CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or pre-negotiation cost objective, and are listed against each separate Form CASB-CMF. Each allocation base is multiplied by its corresponding cost of money factor, to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the Year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, the Contract Facilities Capital Employed can be determined by dividing the contract Cost of Money by the same rate. DD Form 1861 is designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and Capital Employed which is carried forward to the applicable agency structured approach to determination of profit or fee objectives.

1830.7001-5 Pre-award facilities capital applications.

Facilities Capital Cost of Money as determined above is applied in establishing cost and price objectives as follows:

(a) *Cost of money*—(1) *Cost objective.* This special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit objective.* Cost of Money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a pre-negotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

(b) *Facilities capital employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed and weighted in accordance with agency profit guidelines.

1830.7001-6 Post-award facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the Allowable Cost and Payment or Progress Payment clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205-10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract Facilities Capital Cost of Money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Form CASB-CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

1830.7001-7 Administrative procedures.

(a) Contractor submission of Form CASB-CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (FPRAs) (see FAR 15.809), and evaluated as complementary documents and procedures. Separate Forms are required for each procedures. Separate Forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRAs, submissions may nevertheless be made annually or with individual contract pricing proposals, as agreed to by the contractor and the cognizant contract administration office. The cognizant contract administration office shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) The contracting officer will complete a DD Form 1861, Contract Facilities Capital and Cost of Money, after evaluating the contractor's cost proposal and determining the pre-negotiation cost objective, but before determining the pre-negotiation profit objective. The contracting officer may request the cognizant contract administration office to complete the DD Form 1861 in connection with normal field pricing support under FAR 15.805-5, and include it in field pricing support report with appropriate evaluation comments and recommendations.

(c) A final Form CASB-CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

1830.7002 Facilities capital employed for facilities under construction.

1830.7002-1 Policy.

It is Government policy to recognize a contractor's investment in capital facilities while these are being constructed, fabricated, or developed for the contractor's own use. This recognition is made through the allowance of an imputed cost of money amount which is

(a) Calculated in accordance with 1830.7002-3,

(b) Capitalized along with the other costs of the asset for which the investment is made, and

(c) Allocated to contracts following 1830.7002-4.

1830.7002-2 Definitions.

The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction.

(a) *Intangible capital asset.* An asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset.* An asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of months each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(d) *Representative investment.* The representative investment is the calculate amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

(i) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period, or

(ii) Treat month-end balances as individual representative investment amounts.

1830.7002-3 Measurement.

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 1830.7002-2(c)), to the representative investment amount (see 1830.7002-2(d)).

(1) When a representative investment amount is determined for a cost accounting period following 1830.7002-2(d)(1)(i) or 1830.7002-2(d)(2)(i), the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 1830.7002-2(d)(1)(ii) or 1830.7002-2(d)(ii)) is used, the cost of money rate shall be the rate in effect each month.

NOTE: Under this method, the cost of money calculating is made monthly and the total for the cost accounting period is the sum of the monthly calculations.)

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period; either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the repre-sentative investment amount for any future cost accounting periods.

1830.7002-4 Composition and allocation of costs.

(a) The cost of money for a tangible capital asset determined following 1830.7002-2 and 1830.7002-3 shall be capitalized along with the other construction, fabrication, or development cost of that asset for purposes of depreciation under FAR 31.205-11.

(b) The cost of money for an intangible capital asset determined following 1830.7002-2 and 1830.7002-3 shall be capitalized along with other construction, fabrication, or development costs of that asset and amortized over appropriate cost accounting periods.

(c) Where CAS 414 of money is allocated to construction, fabrication, or development effort following 1830.7001, it will be recognized and considered an element of total construction costs and be included in all calculations of the assets representative investment amount.

1830.7002-5 Limitations.

If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

1830.7002-6 Pre-award capital employed application.

An offset to the profit objectives is not required for CAS 417 cost of money.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.1—Applicability

Sec.
1831.101 Objectives.

Subpart 1831.2—Contracts With Commercial Organizations

1831.205 Selected costs.
1831.205-32 Pre-contract costs.

Authority: 42 U.S.C. 2473 (c)(1).

Source: 54 FR 28286, July 5, 1989, unless otherwise noted.

Subpart 1831.1—Applicability

1831.101 Objectives.

Requests for individual deviations from FAR cost principles under FAR 31.101 shall be forwarded for the approval of the Assistant Administrator for Procurement through the Director, Contract Pricing and Finance Division (Code HC).

Subpart 1831.2—Contracts With Commercial Organizations

1831.205 Selected costs.

1831.205-32 Pre-contract costs.

See 1832.705 for NASA policy on pre-contract costs.

PART 1832—CONTRACT FINANCING

Subpart 1832.1—General

Sec.
1832.111 Contract clauses.
1832.111-70 NASA contract clause.
1832.170 Voluntary refunds.

Subpart 1832.4—Advance Payments

1832.402 General.
1832.406 Letters of credit.
1832.406-70 Federal Cash Transaction Report.
1832.407 Interest.
1832.410 Findings, determination, and authorization.
1832.410-70 Instructions for determinations and findings.
1832.412 Contract clause.

Sec.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.
1832.501-2 Unusual progress payments.
1832.502 Pre-award matters.
1832.502-2 Contract finance office clearance.
1832.502-4 Contract clauses.
1832.502-470 NASA contract clause.
1832.503 Post-award matters.
1832.503-3 Initiation of progress payments and review of accounting system.
1832.504 Subcontracts.

Subpart 1832.7—Contract Funding

1832.702 Policy.
1832.702-70 NASA policy.
1832.704 Limitation of cost or funds.
1832.705 Contract clauses.
1832.705-2 Clauses for limitation of cost or funds.
1832.705-270 Additional clauses for limitation of cost or funds.

Subpart 1832.9—Prompt Payment

1832.903 Policy.
1832.908 Contract clauses.
1832.970 Payments to Canadian Commercial Corporation.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28287, July 5, 1989, unless otherwise noted.

Subpart 1832.1—General

1832.111 Contract clauses.

1832.111-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.232-79, Payment for On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

1832.170 Voluntary refunds.

(a) *General.* A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or may be made in response to a Government request. If it is desired to solicit a refund from a subcontractor, the prime contractor should be encouraged to facilitate the making of such refund. In deciding whether or not to solicit a refund or accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all relevant data to determine whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

(b) *Solicited refunds.* Voluntary refunds may be requested during or after contract performance. They shall be requested only when it is considered that the Government has been overcharged under a contract or inadequately compensated for the use of Government-owned property or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a refund shall not be requested, unless the overcharge or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a refund shall be made by the Deputy Administrator or a designee after coordination with the Assistant Administrator for Procurement.

(c) *Disposition of voluntary refunds.* (1) If a voluntary refund is offered before final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(2) When the refund is made by check rather than by adjusting the contract price, the check shall be made payable to the National Aeronautics and Space Administration and shall be forwarded immediately to the Financial Management Office of the appropriate installation. When forwarded, the check shall be accompanied by a letter identifying it as a voluntary refund, giving the number of the contract or contracts involved and, if possible, the account number of the appropriation to which the refund should be credited.

Subpart 1832.4—Advance Payments

1832.402 General.

Determinations and findings in support of advance payments for nonprofit organizations or educational institutions as authorized by the Armed Services Procurement Act of 1947, as amended (10 U.S.C. 2307(c) and 2310(b)), shall be prepared in accordance with 1832.410. The lowest level of authority at which these determinations and findings shall be made is:

(a) The Assistant Administrator for Procurement, for advance payments—

(1) Greater than $25,000,000 for a single action or in the aggregate for a single contract (these payments are also subject to the appropriate 60-day notification to Congress in accordance with 10 U.S.C. 2307(d));

(2) In any amount to a foreign entity; or

(3) In any amount when the organization will receive a fee for the effort involved.

(b) The procurement officer, for advance payments of $25,000,000 or less (other than to a foreign entity or an organization that will receive a fee), provided the action has been coordinated with the installation's Financial Management Officer.

(c) The contracting officer, for increases in the advance payment amount initially authorized by the procurement officer under paragraph (b) of this section, through any modification, supplemental agreement, or extension to an existing contract, provided (1) the contracting officer has coordinated the action with the installation's Financial Management Officer and (2) the increase is not greater than the procurement officer's initial amount and, when aggregated with the procurement officer's initial amount and all previous increases, is not greater than $25,000,000.

1832.406 Letters of credit.

For the purposes of FAR 32.406(b)(1), each installation is considered a contracting agency.

1832.406-70 Federal Cash Transactions Report.

The report required by paragraph (m) of the clause at FAR 52.232-12, Advance Payments, shall be submitted on Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272-A, Federal Cash Transactions Report Continuation.

1832.407 Interest.

Advance payments without interest are hereby authorized, pursuant to FAR 32.407(d)(1).

1832.410 Findings, determination, and authorization.

1832.410-70 Instructions for determinations and findings.

(a) Requests for Headquarters approval of advance payment provisions in accordance with 1832.402 shall be prepared in final form (original and one official file copy) and forwarded to the Assistant Administrator for Procurement, (Code HC). They should include:

(1) The name of the cognizant NASA Headquarters program or staff office;

(2) A copy of the justification for other than full and open competition, if any;

(3) If a fee is contemplated, the estimated cost, the amount and percent of fee, the total cost and fee, and the factors considered in determining the fee (see subpart 1815.9); and

(4) The name and phone number of the contracting officer or negotiator.

(b) Modifications to adapt to special facts and circumstances are permitted, provided they do not conflict with the statutory requirements of 10 U.S.C. 2307 or other authority cited.

(c) 10 U.S.C. 2307 is normally the statutory authority cited for authorizing advance payments. When appropriate, advance payments may also be authorized under 42 U.S.C. 2473(c)(5) or under Pub. L. 85-804 as implemented by Executive Order 10789 (see FAR part 50).

(d) Generally, the format in FAR 32.410 should be used, tailored as follows:

(1) In the second sentence of format subparagraph (a)(4), delete the reference to a special bank account.

(2) Use format subparagraph (a)(6), not (a)(7) or (a)(8).

(3) At the end of format paragraph (b), use "is in the public interest."

1832.412 Contract clause.

The contracting officer, in consultation with the General Counsel, may require special security provisions if appropriate in particular cases. For example, the clause at 1852.232-75, Security for Advance Payments, may be included in solicitations and contracts with nonprofit organizations or educational institutions that include the clause at FAR 52.232-12, Advance Payments.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501-2 Unusual progress payments.

Requests for unusual progress payments must have the specific approval of the Assistant Administrator for Procurement, with the concurrence of the Director, Financial Management Division (Code BF).

1832.502 Pre-award matters.

1832.502-2 Contract finance office clearance.

The approving authority for the actions specified in FAR 32.502-2 is the Assistant Administrator for Procurement. Any such approvals should be coordinated with the Director, Financial Management Division.

1832.502-4 Contract clauses.

1832.502-470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.232-82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests may be changed if this function is delegated. The number of copies of the request may be changed if necessary to meet a substantial need.

1832.503 Post-award matters.

1832.503-3 Initiation of progress payments and review of accounting system.

In connection with the situations mentioned in FAR 32.503-3(b), the Financial Management Officer shall be notified.

1832.504 Subcontracts.

The Government approval mentioned in FAR 32.504(c) shall be as specified in 1832.502-2.

Subpart 1832.7—Contract Funding

1832.702 Policy.

1832.702-70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met (except that, for cost-reimbursement R&D contracts under which no supplies are deliverable, only the condition in subparagraph (a)(3) of this section applies):

(1) The total value of the contract (including options as defined in FAR subpart 17.2) is $1,000,000 or more.

(2) The period of performance under the contract is in excess of twelve months or overlaps the succeeding fiscal year.

(3) Funds are not available to fund the total contract value fully at the time of entering into the contract.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded only if—

(i) The total fixed price of the contract (including options as defined in FAR subpart 17.2) is $1,000,000 or more;

(ii) The period of performance under the contract is in excess of twelve months or overlaps the succeeding fiscal year;

(iii) Funds are not available to fund the total fixed price of the contract at the time of entering into the contract; and

(iv) Initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Notwithstanding the grant of authority to fund contracts incrementally under the circumstances in subparagraph (c)(1) of this section, fixed-price contracts shall be fully funded whenever possible, and incremental funding of such contracts shall be kept to an absolute minimum.

(d) Waiver of any of the conditions set forth in paragraphs (a), (b), and (c) of this section shall be submitted for approval to the installation procurement officer. Concurrence of the installation Comptroller must be obtained on all requests prior to approval by the procurement officer. The procurement officer shall maintain a record of all such approvals during the fiscal year and submit a summary report to the Headquarters Financial Management Division (Code BFC) by October 31. The report will include: contract number, description and type; dollar value; amount of funds initially available; and the reason(s) for the waiver.

[54 FR 28287, July 5, 1989, as amended at 54 FR 53631, Dec. 29, 1989]

1832.704 Limitation of cost or funds.

(a) When a contract contains the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), the procedures in FAR 32.704 are applicable.

(b)(1) It is not necessary, although it is not prohibited, to have separate financial/accounting data for cost and fee. The breakdown is required only in the clause at 1852.232-81.

(2) The amount obligated for fee should always be at least sufficient to pay fee anticipated to be earned by the contractor for the work to which the amount allotted for the estimated cost applies.

1832.705 Contract clauses.

1832.705-2 Clauses for limitation of cost or funds.

As authorized by FAR 52.232-22, the contracting officer shall substitute "Contract Funding clause" for "Schedule," wherever that word appears in the clause at FAR 52.232-22.

1832.705-270 Additional clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), in fixed-price incrementally funded contracts for research and development and in solicitations for these contracts.

(b) The contracting officer shall insert the clause at 1852.232-80, Date of Incurrence of Costs, in cost-reimbursement contracts for which specific coverage of pre-contract costs is authorized under FAR 31.205-32.

(c) The contracting officer shall insert a clause substantially as stated at 1852.232-81, Contract Funding, in solicitations and contracts containing the clause at FAR 52.232-22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The contracting officer may add additional funding information (such as a summary of old amounts, amount(s) added in contract modifications, and new totals) as appropriate for the particular procurement.

Subpart 1832.9—Prompt Payment

SOURCE: 54 FR 53631, Dec. 29, 1989, unless otherwise noted.

1832.903 Policy.

As authorized at FAR 32.903, payments for contracts (other than Fixed-Price Architect-Engineer Contracts, Construction Contracts, and contracts for meats, perishables and dairy products) with the Canadian Commercial Corporation (CCC) shall be made earlier than the standard contract payment due dates.

1832.908 Contract clauses.

(a) When a clause at FAR 52.232-25, 52.232-26 or 52.232-27 is used, the clause at FAR 52.232-28 shall be used as authorized by FAR 32.908(d), modified by deleting the words "and contract number" from paragraph (d). The following paragraph shall be inserted in the clause as (b)(4) in lieu of the FAR paragraph at that location:

(4) The Contractor shall submit a Standard Form 3881 to the installation awarding this contract. If a Standard Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA.

(b) When the clause at FAR 52.232-25, Prompt Payment, is used in contracting with the CCC subject to the conditions at 1832.970—

(1) The number "17" shall be used in lieu of "30" in paragraphs (a)(2)(i) and (a)(2)(ii) of the clause; and

(2) The number "17th" shall be inserted in paragraph (b)(2) of the clause.

1832.970 Payments to Canadian Commercial Corporation.

For contracts with the Canadian Commercial Corporation subject to the policy at 1832.903, as authorized by FAR 32.903, the phrase "the 17th day" shall be used in lieu of "the 30th day" only in FAR Subpart 32.9 at FAR 32.905(a)(1), FAR 32.905(a)(2) and FAR 32.906(a).

PART 1833—PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1—Protests

1833.103 Protests to the agency.
1833.104 Protests to GAO.
1833.105 Protests to GSBCA.

Subpart 1833.2—Disputes and Appeals

1833.209 Suspected fraudulent claims.
1833.211 Contracting officer's decision.
1833.211-70 Contracts awarded before March 1, 1979.
1833.214 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28289, July 5, 1989, unless otherwise noted.

Subpart 1833.1—Protests

1833.103 Protests to the agency.

(a) Immediately upon learning that a protest has been filed, the contracting officer shall notify the Headquarters Procurement Policy Division (Code HP). If the protest is filed directly with an installation, any determination under FAR 33.103(a) to award the contract before the protest is resolved will be made by the contracting officer. If the protest is filed with NASA Headquarters, any such determination will be made by the Assistant Administrator for Procurement.

(b) When a protest is filed directly with an installation or with NASA Headquarters, the contracting officer shall provide any notice under FAR 33.103(b)(1) to offerors whose offers might become eligible for award.

(c) For protests filed with NASA Headquarters, the contracting officer shall forward to the Procurement Policy Division (Code HP) within 10 work days a report essentially the same as that required by FAR 33.104(a)(3).

1833.104 Protests to GAO.

(a) *General.* (1) NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this Regulation.

(2) Upon receiving any communication from a protester or the GAO regarding a protest, the cognizant procurement officer shall immediately contact Code HP for guidance. Conversely, upon Headquarters receipt of notice from GAO of the filing of a protest, Code HP shall immediately notify the cognizant procurement officer. This is usually done via telephone and constitutes the official notice to the installation that a protest has been filed. Within three work days of being notified, the contracting officer shall forward to Headquarters (Code HP) a copy of the procurement file including all documents referred to in FAR 33.104(a)(3)(i) through (v) and any others requested by Code HP. The contracting officer's statement (FAR 33.104(a)(3)(vi)) shall be forwarded no later than ten work days after the contracting officer has been notified. The Contracting Officer's Statement shall receive the concurrence of the installation Chief Counsel. If more time is needed, requests for extension may be made by telephone to Headquarters, Code HP. When the GAO elects to use its express option procedure, the contracting officer's statement shall be forwarded to Code HP within six work days after the contracting officer has

been notified. If that is not possible, a report to Code HP shall be made by telephone.

(3) The notices required by FAR 33.104(a)(4) shall be made by the contracting officer.

(4) The report required by FAR 33.104(a)(5) shall be filed by Headquarters (Code HP).

(5) Headquarters (Code HP) shall furnish copies of the report as required by FAR 33.104(a)(6) and, in consultation with the Office of General Counsel, decide which documents are relevant.

(6) Headquarters (Code HP) shall provide the information required by FAR 33.104(a)(7) to the GAO.

(b) *Protests before award.* (1) The contracting officer shall provide Headquarters (Code HP) with information and recommendations relevant to a determination under FAR 33.104(b)(1) to award a contract prior to resolution of a protest. Any such determination shall be made by the Assistant Administrator for Procurement, who for purposes of this requirement is the "head of the contracting activity." The notification to GAO required by FAR 33.104(b)(2) will be made by Code HP.

(2) The contracting officer shall make the notifications and requests required by FAR 33.104(b)(3).

(c) *Protests after award.* (1) Any request for a determination under FAR 33.104(c)(2) to authorize performance notwithstanding a protest shall be submitted to Headquarters (Code HP). Any such determination shall be made by the Assistant Administrator for Procurement who, for purposes of this requirement, is the "head of the contracting activity." The notification to GAO required by FAR 33.104(c)(3) shall be made by Code HP.

(2) Under FAR 33.104(c)(4), the contracting officer shall consult with Headquarters (Code HP) before terminating a protested contract. If FAR 33.104(c)(5) applies, the contracting officer shall consult with Code HP before taking any action.

(d) *Document requests.* If the protester in its protest statement or later in the process requests documents under FAR 33.104(a)(2), the contracting officer shall forward them to Code HP with the documents required by FAR 33.104(a)(3), within three work days of receipt of the request. Concurrently, the contracting officer shall within 1 work day provide copies of the protest statement, the document request if separate from the protest statement, and the requested documents to the installation Chief Counsel who will prepare a proposed response on the release of the documents. This proposed response will be provided to the contracting officer with copies to Headquarters (Code HP) and the Associate General Counsel for Contracts (Code GK) suitable for incorporation into the Administrative Report.

(e) *Conferences.* Representatives from Code HP and Code GK, and those installation representatives designated by Code HP or requested by the GAO will attend conferences held in accordance with FAR 33.104(e).

1833.105 Protests to GSBCA.

(a) The installation's Office of Chief Counsel shall, in consultation with the Associate General Counsel for Contracts, (Code GK) and the Assistant Administrator for Procurement, represent the agency in protests filed with the GSBCA. The cognizant Chief Counsel is responsible for taking or otherwise ensuring the taking of all actions required by FAR 33.105 and the GSBCA Rules of Procedure.

(b) Upon receiving notice from a non-NASA source of a protest filed with the GSBCA, the receiving office shall immediately notify the cognizant Chief Counsel, who shall further notify the Assistant Administrator for Procurement (Code H), the Associate General Counsel for Contracts (Code GK), and the procurement officer.

(c) The contracting officer is responsible for preparing the protest file required by FAR 33.105(b) and otherwise assisting counsel.

(d) The determination and findings required by FAR 33.105(d)(2) shall be:

(1) Prepared and executed by the director or assistant director of the cognizant technical directorate, the cognizant program/project manager, or cognizant staff official reporting directly to the head of the installation and

(2) Forwarded to the Assistant Administrator for Procurement (Code H) for concurrence.

Subpart 1833.2—Disputes and Appeals

1833.209 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims to the Office of Inspector General (Code W) and the Office of General Counsel (Code G).

1833.211 Contracting officer's decision.

Contracting officers shall alter the paragraph at FAR 33.211(a)(4)(v) to (a) include the address of the NASA Board of Contract Appeals, Code NC, Room 5065, 400 Maryland Avenue, SW., Washington, DC 20546 and (b) reference the Board's small claims procedure for claims of $10,000 or less and the accelerated procedure for claims of $50,000 or less.

1833.211-70 Contracts awarded before March 1, 1979.

Under contracts awarded before the effective date of the Contract Disputes Act of 1978 (March 1, 1979), the contractor may elect to proceed either under the Act or under the Disputes clause in the contract. Therefore, when final decision letters regarding disputes under contracts awarded before that date are prepared, the following paragraph shall be inserted in lieu of the paragraph in FAR 33.211(a)(4)(v):

> This is the final decision of the contracting officer. Since your contract was awarded before the effective date of the Contract Disputes Act of 1978 (March 1, 1979), you may appeal this decision by following the procedures of either—
>
> (a) The Disputes clause at Federal Acquisition Regulation 52.233-1; or
>
> (b) The Disputes clause (dated September 1962) in your contract.
>
> If you decide to appeal under Procedure (a), the current Disputes clause, you must (1) mail or otherwise furnish written notice to the NASA Board of Contract Appeals, Code NC, Room 5065, 400 Maryland Avenue, SW., Washington, DC 20546 within 90 days after receiving this decision and (2) furnish a copy of the notice to the contracting officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended and should reference this decision and identify the contract by number. For appeals under this clause you may elect to proceed under the NASA Board of Contract Appeals' small claims procedure (for claims of $10,000 or less) or its accelerated procedure (for claims of $50,000 or less). In lieu of appealing to the NASA Board of Contract Appeals, you may bring an action directly in the U.S. Claims Court within 12 months after receiving this decision.
>
> If you decide to appeal under Procedure (b), the Disputes clause of your contract you must mail or otherwise furnish to the contracting officer, within 36 days after receipt of this decision, a written appeal or notice addressed to the Administrator of NASA or the Board of Contract Appeals, indicating that an appeal is intended, referencing this decision, and identifying the contract by number. For appeals filed under this clause, you may elect to proceed under the NASA Board of Contract Appeals' optional accelerated procedure (for claims of $25,000 or less). The NASA Board of Contract Appeals is the authorized representative of the Administrator for hearing and determining disputes.
>
> For additional information, see the procedures of the NASA Board of Contract Appeals, which appear in part 14, Code of Federal Regulations, section 1241. The Board will mail you a copy of its procedures if you file an appeal from this decision in timely fashion.

1833.214 Contract clause.

The contracting officer shall use Alternate I the clause at FAR 52.233-1, Disputes, whenever continued performance is vital to national security, the public health and welfare, important agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1834—MAJOR SYSTEM ACQUISITION

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28290, July 5, 1989, unless otherwise noted.

1834.002 Policy.

NASA's implementation of OMB Circular No. A-109 and FAR part 34 is contained in NMI 7100.14, Major System Acquisitions.

1834.005-1 Competition.

(a) In procurements subject to the provisions of OMB Circular No. A-109, Major Systems Acquisitions, and NASA Management Instruction 7100.14, or other similar phased-type procurements, it is NASA policy to ensure competition in the selection of contractors for award. Phase B usually covers the exploration of design concepts while Phase C/D deals with developing and fabricating equipment in accordance with designs that have proven acceptable. In such procurements, where Phase B is subject to full and open competition and all offerors are made aware that a continuous process of "down-selection" will be used, then the subsequent C/D solicitation and award are considered to be a continuum of the initial competition (Phase B) and the entire process is considered full and open competition. To this end, Phase B should be synopsized in accordance with FAR 5.201 and solicit all known potential sources to explore design concepts. In addition to the other information required by FAR 5.207, the synopsis should state that the subsequent solicitation for Phase C/D will build on the design concepts selected in Phase B and that NASA intends to solicit offers on that procurement only from those firms which were successful in Phase B. The Phase B RFP should also include this statement.

(b) Solicitations must be issued for Phase C/D and a source selection accomplished, unless an appropriate Justification for Other Than Full and Open Competition has been approved; "technical" down-selection from Phase B to Phase C/D without the issuance of a Phase C/D solicitation is not appropriate. Solicitations for Phase C/D should be limited to those firms which successfully completed Phase B or to those which can otherwise demonstrate that they meet the design requirements of Phase B. Procurements for Phase C/D must be properly synopsized, and state that it is the second phase of a phased procurement and that the Phase C/D solicitation is being issued to the offerors who successfully completed the Phase B design requirements, and identify the firms which are being solicited for Phase C/D. The synopsis must also state that any other potential offeror for Phase C/D must meet the Phase B requirement. If a prospective offeror, other than a successful contractor in Phase B, responds to the synopsis, the contracting officer shall allow the offeror to compete, but caution the interested firm that any product offered must satisfy the requirement for an equivalent mature design concept acceptable to NASA delineated in Phase B.

(c) Phased procurements which meet the conditions in paragraphs (a) and (b) of this section are considered to be full and open competition. If only one contractor successfully completed Phase B and, after soliciting offers from more than one source, no other potential offeror responded to the solicitation for Phase C/D, the award shall be reported as a "noncompetitive procurement using competitive procedures" (see 1804.671-4(m)).

(d) When the conditions in paragraphs (a) and (b) of this section can not be met or where NASA chooses to develop an independent design after Phase B products have been evaluated, the procurement should proceed on the basis of full and open competition unless circumstances justify using one of the exceptions set forth in FAR 6.302 or one of the exclusions under FAR subpart 6.2. In any event, the synopsis requirements of FAR 5.201 apply. (For this purpose, an "independent design" can be (1) a synthesis of the Phase B products; (2) a totally new design developed by NASA; or (3) a combination thereof.)

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1835.003 Policy.
1835.003-70 Scientific and Technical Information Service.
1835.003-71 Plan for New Technology Reporting.
1835.014 Government property and title.
1835.015 Contracts for research with educational institutions and nonprofit organizations.
1835.016 Broad agency announcements.
1835.016-70 NASA Research Announcements.
1835.070 NASA contract clauses and solicitation provision.
1835.071 Space Transportation System Personnel Reliability Program.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28291, July 5, 1989, unless otherwise noted.

1835.003 Policy.

(a) See NHB 5800.1, NASA Grant and Cooperative Agreement Handbook, for policy regarding the use of grants and cooperative agreements.

(b) See 1816.303 for NASA policy regarding cost sharing.

(c) See NMI 5109.13, Recoupment Policy for the Use of NASA Technology, for NASA policy regarding recoupment.

1835.003-70 Scientific and technical information service.

NASA encourages contractors to use scientific and technical information in the possession of the agency in direct support of all NASA contracts involving research and development work (42 U.S.C. 2473). This information includes past and current reports on research, development, test, and evaluation. Certain information (e.g., Scientific and Technical Aerospace Reports (STAR)) announcing current publications covering aeronautics, space, and supporting disciplines is available to contractors free of charge; contractors may be charged for other types of information (e.g., automatic distribution of reports on a specific subject) or services (e.g., searches of the NASA data base or on-line access to the NASA data base through NASA/RECON). To be provided scientific and technical information in a timely manner, the contractor must furnish NASA the information specified in the clause at 1852.235-70, Scientific and Technical Information Service.

1835.003-71 Plan for New Technology Reporting.

(a) NASA's policy is to obtain prompt reporting of any invention, discovery, improvement, or innovation (i.e., items of new technology, whether or not patentable) made in the performance of NASA contracts to provide for its widest practical and appropriate dissemination. The clause at 1852.227-70, New Technology, is included in certain NASA contracts (see 1827.373(b)) to ensure the prompt reporting of such inventions, discoveries, improvements, and innovations.

(b) When the contracting officer wants to ensure that offerors adequately understand the new technology reporting requirements in solicitations that include the clause at 1852.227-70, New Technology, the contracting officer may include the provision at 1852.235-72, Plan for New Technology Reporting. The provision requires offerors to provide:

(1) Estimates of cost and manpower requirements to perform new technology reporting and

(2) If selected for negotiation, a detailed plan for such reporting.

1835.014 Government property and title.

For items having an acquisition cost of more than $5,000, the determination at FAR 35.014(b)(2)(iii) that vesting title in the contractor would not further the objectives of NASA's research program must be approved at a level higher than the contracting officer.

1835.015 Contracts for research with educational institutions and nonprofit organizations.

(a) In addition to the requirements of FAR 35.015(a)(1)(iv), the institution must obtain the contracting officer's approval when it plans to continue the research work during a continuous period in excess of three months without the participation of an approved principal investigator or project leader.

(b) For NASA policy regarding advance payments under contracts with educational institutions, see subpart 1832.4.

1835.016 Broad agency announcements.

(a) The following forms of broad agency announcements are authorized for use:

(1) Announcements of Opportunity, described in subpart 1870.1, NASA Acquisition of Investigations System.

(2) NASA Research Announcements, described in 1835.016-70.

(3) Other forms of announcements approved by the Assistant Administrator for Procurement.

(b) Broad agency announcements may not preclude the participation of any offeror capable of satisfying the Government's needs unless a justification for other than full and open competition is approved under FAR 6.304 (see FAR 6.102(d)(2) and 35.001).

(c) Other program announcements, notices, and letters not authorized by paragraph (a) of this section shall not be used to solicit proposals that may result in contracts.

1835.016-70 NASA Research Announcements.

(a) *Scope.* This section 1835.016-70 prescribes regulations and procedures for the use of a NASA Research Announcement (NRA), a form of broad agency announcement (see FAR 6.102(d)(2)). An NRA is used to announce NASA's research interests and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest to NASA. The NRA is intended to be used for those research procurements for which it would be impossible to draft an adequate RFP in sufficient detail without restraining the technical response and thus hindering the competition of ideas, rather than expanding competition. Consequently, an NRA shall not be used in place of an RFP when the procurement requirement is narrowly defined and it is necessary to use a detailed description or specification.

(b) *Issuance.* (1) Each NRA shall be assigned a unique number in accordance with 184.7102-1.

(2) NRAs may remain open for proposal submission for a maximum of one year. They may not be amended or modified once issued, but may be reissued by assigning a new number and resynopsizing. (See also paragraph (g) of this section.) NRAs should remain open for at least 90 days.

(3) Before issuance, each field-generated NRA shall be concurred in by the procurement officer and approved by the installation's director or a designee, who shall serve as or designate a selecting official. Before issuance, each Headquarters-generated NRA shall be concurred in by General Counsel (Code GK) and the Director, Headquarters Acquisition Division (Code HW) and approved by the cognizant Program Associate Administrator or a designee, who shall serve as or designate a selecting official. If a Headquarters-generated NRA may result in awards by a NASA field installation, the concurrence of that installation's procurement officer may be sought in place of or in addition to Code HW's concurrence.

(4) The contracting officer shall assure that the NRA is synopsized in the Commerce Business Daily (CBD). The CBD synopsis required by FAR 35.016(c) satisfies the synopsis requirement at FAR 5.201; the synopsis contemplated by FAR 5.205 is not required. The synopsis shall be brief and provide the address for obtaining a copy of the detailed NRA. The technical part of the synopsis is intended to describe an identifiable area of interest and should not exceed 50 words.

(5) The NRA shall be prepared, printed, and distributed by or under the direction of the selecting official. Distribution shall not begin until the concurrence of the procurement officer has been obtained and the contracting officer has confirmed that the synopsis requirements have been met. The NRA shall be distributed to each coordinating office responsible for re-

ceipt of unsolicited proposals and to the Office of Procurement (Code HS).

(6) In addition to the concurrences and approvals in paragraph (b)(3) of this section, each installation shall submit its first two NRAs to the Assistant Administrator for Procurement (Code HS) for concurrence before issuance.

(c) *Content.* The NRA shall consist of the following items in the order shown. This entire package shall be provided in response to requests.

(1) *Cover.* The cover shall display:

(i) "OMB Approval Number 2700-0042" in the upper right corner.

(ii) Title (centered, in uppercase).

(iii) "NASA Research Announcement Soliciting Research Proposals for the Period Ending _____" (centered, on three lines, two inches below the title; insert closing date).

(iv) NRA number (centered, two inches below closing date).

(v) Official address for office issuing NRA (centered, at bottom of cover).

(2) *Summary and Supplemental Information.* (i) The Summary and Supplemental Information shall not exceed two pages and shall include:

(A) Title (centered, in uppercase).

(B) Introductory paragraphs describing the purpose of the NRA and the period for receipt of proposals. When proposals received during this period may be grouped for evaluation at separate times, the introductory paragraphs shall indicate when evaluations are planned and shall include the following remark:

> A proposal that is scientifically and programmatically meritorious, but that cannot be accepted during its initial review under an NRA because of funding uncertainties, may be included in subsequent reviews unless the offeror requests otherwise.

(C) NRA number.

(D) Address for submitting proposals, including "ATTN: NRA _____." (Insert NRA number.)

(E) Copies required.

(F) Selecting official's title.

(G) Name, address, and telephone number for additional technical information.

(H) Name and telephone number of contracting office point of contact for administrative and contractual information.

(I) Additional instructions supplementing the Instructions for Responding to NASA Research Announcements for Solicited Research Proposals (see subpart 1870.2). Such information shall be kept to the minimum necessary for a particular NRA and shall cite specific "Instructions" paragraphs supplemented.

(J) When awards will be chargeable to funds of the new fiscal year and the NRA is to be issued before funds are available, the NRA shall contain a statement as follows:

> Funds are not presently available for awards under this NRA. The Government's obligation to make awards is contingent upon the availability of appropriated funds from which payment for award purposes can be made and the receipt of proposals that the Government determines are acceptable for award under this NRA.

(ii) The Summary and Supplemental Information may include estimates of the amount of funds that will be available and the number of anticipated awards. A breakdown of the estimates by research area may also be shown.

(iii) The Summary and Supplemental Information may indicate that proposals submitted under an earlier NRA and held for subsequent reviews will be considered and need not be resubmitted. To so indicate, the earlier NRA shall be identified by number in the following statement:

> Proposals for which no selection decision was made under NRA _____ and held for subsequent reviews will be considered under this NRA and need not be resubmitted. (Insert NRA number).

(3) *Technical Description.* The first page shall contain the NRA number and title at the top. A brief description not exceeding two pages is preferable, but it should be detailed enough to enable ready comprehension of the research areas of interest to NASA. Specifications containing detailed statements of work more suited to RFPs should be avoided. Any program management information included must be limited to matters that are essential for proposal preparation.

(4) *Instructions for Responding to NASA Research Announcements for Solicited Research Proposals.* The

NRA shall contain instructions in accordance with 1870.203.

(d) *Unsolicited proposals.* (1) Unsolicited proposals for new efforts that are within the scope of an open NRA shall be evaluated in accordance with 1815.506(b).

(2) Unsolicited proposals for renewal of ongoing efforts that are within the scope of an open NRA shall be evaluated in accordance with 1815.505-70.

(3) A broad agency announcement shall not be considered to be an "acquisition requirement" as the term is used in FAR 15.507(a)(2).

(e) *Receipt of proposals, evaluation, and selection.* (1) Proposals shall be protected as provided in 1815.508-70 and 1815.509-70.

(2) Evaluation, selection, and award may occur during or after the period established for receipt of proposals. Late proposals and modifications shall be treated in accordance with 1815.412 (a) and (b).

(3) When more than one time is established in the NRA for evaluating proposals, proposals received prior to the time established will be considered as part of the initial group to be evaluated. Subsequent groups of proposals to be evaluated shall be formed from those proposals received after the time established for the earlier evaluation groups and prior to the time established for a subsequent group, along with those proposals, if any, held over under paragraph (e)(8) of this section.

(4) The selection decision shall be made following peer or scientific review of a proposal. Peer or scientific review shall involve (i) evaluation, outside NASA, by a discipline specialist in the area of the proposal, (ii) evaluation by an in-house specialist, or (iii) both. Evaluation by specialists outside NASA shall be conducted subject to the conditions in FAR 15.413-2(f) and NFS 1815.413 and 1815.413-2. In particular, the selecting official shall ensure compliance with FAR 15.413-2(f)(5) regarding the designation of outside evaluators and avoidance of conflicts of interest. After receipt of a proposal and before selection, scientific or engineering personnel shall communicate with an offeror, regarding the proposal, only for the purpose of clarification, as defined in FAR 15.601, or in order to understand the meaning of some aspect of the proposal that is not clear, or in order to obtain confirmation or substantiation of a proposed approach, solution, or cost estimate.

(5) Competitive range determinations shall not be made, and best and final offers shall not be requested.

(6) All or part of a proposal may be selected unless the offeror requests otherwise. In addition, changes to a selected proposal may be sought as long as (i) the ideas or other aspects of the proposal on which selection is based are contained in the proposal as originally submitted, and are not introduced by the changes; and (ii) the changes sought would not involve a material alteration to the requirements stated in the NRA. Changes that would affect a proposal's selection shall not be sought. When changes are desired, they may be described to the contracting officer under paragraph (e)(10)(ii) of this section, or the selecting official may request revisions from the offeror. The changes shall not transfer information from one offeror's proposal to another offeror (see FAR 15.610(d)(2)). When collaboration between offerors would improve proposed research programs, collaboration may be suggested to the offerors.

(7) The basis for selection of a proposal shall be documented in a selection statement applying the evaluation factors in the NRA. The selection statement represents the conclusions of the selecting official and must be self-contained. It shall not incorporate by reference the evaluations of the reviewers.

(8) A proposal that is scientifically and programmatically meritorious, but that is not selected during its initial review under an NRA, may be included in subsequent reviews unless the offeror requests otherwise. If the proposal is not to be held over for subsequent reviews, the offeror shall be notified that the proposal was not selected for award.

(9) The selecting official shall notify each offeror whose proposal was not selected for award and explain generally why the proposal was not selected. If requested, the selecting official shall arrange a debriefing under

1815.1003, with the participation of a contracting officer.

(10) The selecting official shall forward to the contracting officer—

(i) The results of the technical evaluation, including the total number of proposals received under the NRA by the time of selection, the selection statement, and the proposal(s) selected for funding;

(ii) A description of any changes desired in any offeror's statement of work, including the reasons for the changes and any effect on level of funding;

(iii) If a contract will be used to fund the proposal, a description of deliverables, including technical reports, and delivery dates, consistent with the requirements of the NRA;

(iv) A procurement request;

(v) Comments on the offeror's cost proposal (either the selecting official's comments, which may be based on the reviewers' comments, or copies of the reviewers' comments with any different conclusions of the selecting official); these comments shall address the need for and reasonableness of travel, computer time, materials, equipment, subcontracted items, publication costs, labor hours, labor mix, and other costs; and

(vi) A copy of the selected proposal as originally submitted, any revisions, and any related correspondence from the successful offeror.

(11) The selecting official may provide to the contracting officer copies of the reviewers' evaluations. Reviewers' names and institutions may be omitted in order to protect their identity.

(12) The selecting official may notify each offeror whose proposal was selected for negotiation leading to award.

(i) The notification shall state that—

(A) The proposal has been selected for negotiation leading to award;

(B) The offeror's business office will be contacted by a contracting officer, who is the only official authorized to obligate the Government; and

(C) Any expenses incurred by the offeror in anticipation of receiving an award will be at the offeror's risk.

(ii) The notification may identify which award instrument (contract, grant, cooperative agreement, or other agreement) has been recommended.

(f) *Award.* If a contract is selected as the award instrument (see FAR 35.003(a) and 1835.003(a)), the contracting officer shall—

(1) Advise the offeror that the Government contemplates entering into negotiations; the type of contract contemplated; and the estimated award date, level of effort, and delivery schedule;

(2) Send the offeror a model contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions (the contract statement of work may summarize the proposed research, state that the research shall be conducted in accordance with certain technical sections of the proposal (which shall be identified by incorporating them into the contract by reference), and identify any changes to the proposed research);

(3) Request the offeror to complete and return certifications and representations and Standard Form 33, Solicitation, Offer, and Award, or other appropriate forms;

(4) Conduct negotiations in accordance with FAR Subparts 15.8 and 15.9, as applicable;

(5) Award a contract with reasonable promptness to the successful offeror by transmitting written notice of the award to that offeror; and

(6) Comply with FAR subparts 4.6 and 5.3 on contract reporting and synopses of contract awards, to the extent required by those subparts.

(g) *Cancellation of an NRA.* When program changes, the absence of program funding, or any other reasons require cancellation of an NRA, the contracting officer shall publish a notice in the Commerce Business Daily. The office issuing the NRA may provide additional notification by using the mailing list for the NRA.

[54 FR 28291, July 5, 1989, as amended at 55 FR 27089, June 29, 1990]

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.235-70, Scientific and Technical Information Service, in all research and development contracts and in cost-reimbursement supply contracts involving research and development work.

(b) The contracting officer shall insert the clause at 1852.235-71, Key Personnel and Facilities, in contracts when source selection has been substantially predicated upon the possession by a given offeror of special capabilities, as represented by either key personnel or facilities.

(c) The contracting officer shall insert the provision at 1852.235-72, Plan for New Technology Reporting, in any solicitation for contract estimated to cost $2,500,000 or more if the contract is also to contain the clause at 1852.227-70, New Technology, unless, in consultation with the installation's New Technology Officer, the contracting officer determines that the provision is not appropriate. The contracting officer may insert the provision in solicitations for any such contract of a lesser dollar amount if deemed appropriate after consultation with the installation's New Technology Officer.

1835.071 Space Transportation System Personnel Reliability Program.

The Space Transportation System is a national resource providing a capability to support a wide range of scientific, applications, commercial, defense, and international uses. Criteria and procedures for assuring the highest standards of reliability in personnel assigned to mission-critical positions in connection with the Space Transportation System are set forth in NMI 8610.13, Space Transportation System Reliability Program (see 1846.270(a)).

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.2—Special Aspects of Contracting for Construction

Sec.
1836.203 Government estimate of construction costs.
1836.205 Statutory cost limitations.
1836.209 Construction contracts with architect-engineer firms.

Sec.

Subpart 1836.3—Special Aspects of Sealed Bidding in Construction Contracts

1836.303 Invitations for bids.
1836.303-70 Additive and deductive items.
1836.370 Solicitation provisions.

Subpart 1836.5—Contract Clauses

1836.570 NASA contract clause and solicitation provision.
1836.570-1 Hurricane plan.
1836.570-2 Magnitude of requirement.

Subpart 1836.6—Architect-Engineer Services

1836.600 Scope of subpart.
1836.600-70 Interorganizational acquisition of architect-engineer services.
1836.602 Selection of firms for architect-engineer contracts.
1836.602-1 Selection criteria.
1836.602-2 Evaluation boards.
1836.602-3 Evaluation board functions.
1836.602-4 Selection authority.
1836.602-5 Short selection processes for contracts not to exceed $10,000.
1836.602-70 Selection of architect-engineers for master planning.
1836.602-71 Conflict of interest.
1836.603 Collecting data on and appraising firms'qualifications.

Subpart 1836.7—Standard Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28294, July 5, 1989, unless otherwise noted.

Subpart 1836.2—Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs.

(a) The initiator of the Government estimate shall designate the estimate "For Official Use Only" unless the information in the estimate requires a security classification, in which event it shall be handled in accordance with applicable security regulations.

(b) If the acquisition is by sealed bidding, the contracting officer shall file a sealed copy of the detailed Government estimate with the bids until bid opening. After the bids are read and recorded, the contracting officer shall remove the "For Official Use Only" designation, read the estimate, and record it in the same detail as the bids.

(c) If the acquisition is by negotiation, the contracting officer may disclose cost breakdown figures in the Government estimate during negotiations, but only to the extent necessary for arriving at a fair and reasonable price. However, the contracting officer shall not disclose the overall amount of the Government estimate prior to award. At the time of award, the "For Official Use Only" designation shall be removed. After award, the contracting officer may reveal the Government estimate, upon request, to offerors.

1836.205 Statutory cost limitations.

"Statutory cost limitations" refers to cost limitations that may be included in an agency's annual appropriation act.

1836.209 Construction contracts with architect-engineer firms.

(a) Except as provided in paragraph (c) of this section, contracting officers shall not—

(1) Solicit offers for the construction of a facility from any firm, its subsidiaries, or affiliates furnishing architect-engineer services for that facility; or

(2) Consider unsolicited offers from that firm, its subsidiaries, or affiliates.

(b) An architect-engineer firm selected for negotiation of an architect-engineer services contract under the procedures in 1836.602 shall be advised of the policy in paragraph (a) of this section before initiation of negotiations, if that firm possesses construction capabilities either within its own organization or through subsidiaries or affiliates. The firm shall have the option of either—

(1) Declining to enter into contract negotiations, in order to be eligible to compete for the related construction contract; or

(2) Entering into contract negotiations with the clear understanding that, if such negotiations are successful, the firm, its subsidiaries, and affiliates will be ineligible to compete for the related construction contract.

(c)(1) The policy in FAR 36.209 does not apply when—

(i) The Assistant Administrator for Procurement, upon recommendation from Code HS, specifically authorizes, before the initiation of negotiations, use of a cost-plus-fixed-fee contract for both the design and construction of a facility; or

(ii) A contract:

(A) Is awarded on the basis of performance specifications for the construction of a facility, and

(B) Requires the contractor to furnish construction drawings, specifications, or site adaptation drawings of the facility.

(2) The contracting officer shall prepare requests for authorization pursuant to paragraph (b)(1)(i) of this section in sufficient detail to establish the need for procuring both design and construction under one contract. In neither of the excepted cases in paragraph (b)(1) of this section shall the firm that prepared the drawings and specifications be engaged to supervise and inspect, on behalf of the Government, the construction of the facility involved.

Subpart 1836.3—Special Aspects of Sealed Bidding in Construction Contracts

1836.303 Invitations for bids.

1836.303-70 Additive and deductive items.

(a) When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for bids for (1) a first or base bid item covering the work generally as specified and (2) one or more additive or deductive bid items progressively adding or omitting specified features of the work in a stated order of priority. In such case, the low bidder and the items to be awarded shall be determined as described in the provision at 1852.236-71, Additive or Deductive Items.

(b) The contracting officer, before the opening of bids, shall determine and record in the contract file the amount of funds available for the project. This amount shall be controlling for determining the low bidder, but may be increased for determining the items to be awarded, provided that award on the combination of items does not exceed the amount offered by any other conforming responsible bidder for the same combination of items.

1836.370 Solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.236-71, Additive or Deductive Items, in invitations for bids for construction when it is desired to add or deduct bid items to meet available funding.

(b) The contracting officer shall insert the provision at 1852.236-72, Bids with Unit Prices, in invitations for bids for construction when the invitation contemplates unit prices of items.

Subpart 1836.5—Contract Clauses

1836.570 NASA contract clause and solicitation provision.

1836.570-1 Hurricane plan.

The contracting officer shall insert the clause at 1852.236-73, Hurricane Plan, in solicitations and contracts for construction at sites that experience hurricanes.

1836.570-2 Magnitude of requirement.

The contracting officer shall insert the provision at 1852.236-74, Magnitude of Requirement, in solicitations for construction. Insert the appropriate estimated dollar range in accordance with FAR 36.204.

Subpart 1836.6—Architect-Engineer Services

1836.600 Scope of subpart.

1836.60.-70 Interorganizational acquisition of architect-engineer services.

Procedures for acquiring architect-engineer services through the construction organization of the Corps of Engineers, Department of the Army, are set forth in NASA-Corps of Engineers Agreement for Performance of Construction Services, which can be obtained from the Headquarters Office of Procurement (Code HS).

1836.602 Selection of firms for architect-engineer contracts.

1836.602-1 Selection criteria.

(a) As permitted by FAR 36.602-1(a)(6), in evaluating architect-engineer firms, the architect-engineer selection board shall apply any criteria set forth in the public notice regarding a particular requirement and the volume of work previously awarded to the firm by NASA, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms, including minority-owned firms and firms that have not had prior NASA contracts.

(b) It should be noted that the evaluation criteria in paragraph (a) of this section and FAR 36.602-1(a) are not listed in order of importance. The relative weight to be assigned to them may vary with the particular requirements of the individual procurement.

(c) NASA will consider the immediate past 10 years as the period for evaluation under FAR 36.602-1(a) (2) and (4).

1836.602-2 Evaluation boards.

In compliance with FAR 36.602-2, the head of each installation shall establish an architect-engineer selection board to be composed of at least three members. Appointment of members who are not Government employees is not authorized.

1836.602-3 Evaluation board functions.

The report required by FAR 36.602-3(d) should, as a minimum, discuss each criterion for each offeror and explain why one firm is rated higher than the others.

1836.602-4 Selection authority.

The head of each installation is designated as the selection authority for that installation for the purposes of FAR 36.602-4.

1836.602-5 Short selection processes for contracts not to exceed $10,000.

(a) Use of the procedures at FAR 36.602-5 is permitted when authorized by the head of the installation.

(b) The head of the installation is designated as the selection authority for that installation for the purposes of FAR 36.602-5(b)(2).

1836.602-70 Selection of architect-engineers for master planning.

(a) *Definition of master plan.* A master plan is an integrated series of documents presenting in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) *Selection.* (1) Selection of an Architect-Engineer for the development of a master plan in connection with the establishment of a new NASA activity or installation shall be made by the Associate Administrator having institutional responsibility. The report of the architect-engineer selection board will be concurred in at NASA Headquarters by the Associate Administrator for Management, the Assistant Administrator for Procurement, the Comptroller, and the General Counsel.

(2) The Associate Administrator for Management shall be responsible for the architect-engineer selection board report required by FAR 36.602-3(d) and necessary revisions required from the reviews in 1836.602-70(b)(1), if any, before presentation to the Associate Administrator having institutional responsibility.

[54 FR 28294, July 5, 1989, as amended at 54 FR 39373, Sept. 26, 1989]

1836.602-71 Conflict of interest.

(a)(1) All persons participating in an architect-engineer solicitation, evaluation, review or selection activity shall have a written certification on file in NASA stating knowledge of and compliance with the Standards of Conduct of NASA Employees (NHB 1900.1). The minimum certification shall be:

CERTIFICATION

I, the undersigned, hereby reaffirm that I have read NHB 1900.1, Standards of Conduct for NASA Employees, have filed the relevant NASA Form 1270, and have examined the attached list of competitors for the (Title) project before the architect-engineer selection board. I certify that I have no financial or other personal interest in these firms.

(Signature) ____________________
(Date) ____________________

(End of certification)

(2) Any person unwilling or unable to make and furnish the required certification shall be disqualified from participating in any architect-engineer selection board activity.

(3) The certification provided pursuant to 1836-602-71(a)(1) shall be on file with the Office of General Counsel (Code GG) for Headquarters persons and with the field center Chief Counsel for field center personnel.

(b) Any person signing a certification under 1836.602-71(a)(1) who subsequently acquires a real or apparent conflict of interest hereunder shall immediately cease further activity, report the conflict to the selection board chair-person and withdraw from further participation. Further, such conflicts are to be concurrently reported to the appropriate counsel's office who is responsible for determining whether any employee's acquired conflict necessitates any further action.

(c) Any person associated with these activities who becomes aware of any extraneous influences being brought to bear on participants shall report such to the Office of Inspector General (Code W).

[54 FR 39374, Sept. 26, 1989]

1836.603 Collecting data on and appraising firms' qualifications.

The architect-engineer selection boards (see 1836.602-2) are designated as NASA's evaluation boards for the purposes of FAR 36.603.

Subpart 1836.7—Standard Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.

(a) Architect-Engineer Contract (Standard Form 252). Instructions for completing this form are as follows:

(1) *Block 5—Project Title and Location.* Include a short description of the construction project and the estimated

cost of constructing the facilities for the project. If the space provided is insufficient, include a more detailed description in the contract's specification/work statement and identify the location of the more detailed description in Block 10.

(2) *Block 6—Contract for (General description of services to be provided).* Include a brief description of the services and state that they are fully set out in the specification/work statement. Clearly specify the date by which design services must be completed. If supervision and inspection services during construction are to be procured, also clearly specify the date by which they must be completed and add a statement that the Government may extend the period for their performance as provided in the Changes clause of the contract.

(3) *Block 7—Contract Amount.* If the contract is for both design and supervision and inspection services, set out the amounts for each effort separately.

(b) Statement of architect-engineer services accompanying the SF 252. The services to be furnished by an architect-engineer should be carefully defined during negotiation of the contract and a statement of them inserted in the contract's specification/work statement. The statement should clearly and concisely set forth the nature and extent of the services and include any special services, such as the nature and extent of subsurface exploration prior to designing foundations. A similar statement of supervision and inspection services should be inserted in the specification/work statement if supervision and inspection services are to be acquired.

PART 1837—SERVICE CONTRACTING

Sec.
1837.000 Scope of part.

Subpart 1837.1—Service Contracts—General

1837.101 Definitions.
1837.104 Personal services contracts.
1837.105 Competition in service contracting.
1837.110 Solicitation provisions and contract clauses.
1837.110-70 NASA contract clause.
Sec.
1837.170 Pension portability.

Subpart 1837.2—Advisory and Assistance Services

1837.200 Scope of subpart.
1837.202 Policy.
1837.202-70 NASA policy.
1837.202-71 Public inspection.
1837.205 Management controls.
1837.205-70 Requests for approval.
1837.205-71 Negotiation of contracts.

AUTHORITY: 42 U.S.C. 2473 (c)(1).

SOURCE: 54 FR 28296, July 5, 1989, unless otherwise noted.

1837.000 Scope of part.

For purposes of this part, construction is not considered a service.

Subpart 1837.1—Service Contracts—General

1837.101 Definitions.

Pension portability means the recognition and continuation in a successor service contract of the predecessor service contract's pension rights and benefits for contractor employees.

1837.104 Personal services contracts.

(a) Under section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)), NASA is authorized "to obtain services as authorized by section 3109 of Title 5, United States Code, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18." 5 U.S.C. 3109, in turn, provides authority to procure by contract "the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services."

(b) It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in the NASA Supplement to the Federal Personnel Manual.

1837.105 Competition in service contracting.

(a) See 1837.104 above regarding negotiation for personal and professional services.

(b) Frequently NASA must contract for services that require immediate performance after minimum prior notice to proceed. Typical of these requirements are contracts for engineering services; maintenance, repair, or overhaul of specialized equipment; and printing or reproduction and data processing services to be furnished on a "call basis" when time is of the essence to meet priority requirements.

(c) The NASA policy of obtaining competition to the maximum practicable extent applies to these types of services. Geographic limitations imposed on prospective contractors are likely to appear arbitrary to the business community and therefore are proper only when demonstrably justifiable. Even when a geographic limitation is justifiable, no firm desiring to compete for the procurement may be denied the opportunity to do so merely because it is located outside the geographic area. Such firms shall be permitted to submit offers, provided they can substantiate their capability to establish a facility in a location that complies with any required geographical limitation.

(d) A preferred method of obtaining services or supplies required on a prompt response basis is by clearly describing in the solicitation the maximum time that may elapse between placement of the order or call and the delivery date. Such time limitations, when required by the nature of the procurement, will normally meet NASA's needs for prompt delivery without introducing unnecessarily restrictive criteria limiting the competitive field of prospective contractors.

(e) The procurement officer or a designee shall review and approve, prior to distribution, solicitations that contemplate either a geographical-area or time-of-performance limitation.

1837.110 Solicitation provisions and contract clauses.

The contracting officer shall obtain the Assistant Administrator for Procurement's (Code HP) approval before using in a solicitation, contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

1837.110-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.237-70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornados, earthquakes, or other emergencies.

1837.170 Pension portability.

It is NASA's policy not to require pension portability in service contracts. However, if it is in the Government's best interest, NASA may consider the inclusion of pension portability requirements in a service contract under the following conditions:

(a) Only defined contribution plans shall be permitted in portability provisions;

(b) At a minimum, vesting shall be 100 percent at contract completion or termination; and

(c) There must be a clear description of the plan, including coverage regarding service, pay, and benefits, as appropriate, from prior contractors.

Subpart 1837.2—Advisory and Assistance Services

Source: 55 FR 12176, Apr. 2, 1990, unless otherwise noted.

1837.200 Scope of subpart.

This subpart implements and supplements FAR subpart 37.2 and NMI 5104.5, Guidelines for the Use of Advisory and Assistance Services Obtained by Contract, and establishes procedures to be followed in contracting for advisory and assistance services.

1837.202 Policy.

1837.202-70 NASA policy.

In addition to the prohibitions regarding advisory and assistance services listed at FAR 37.202(c)—

(a) Contracts for advisory and assistance services shall not be continued longer than five years;

(b) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NMI 3304.1, Employment of Experts and Consultants);

(c) Task orders for advisory and assistance services issued under the prime contract between the California Institute of Technology and NASA for the operation of the JPL facility must be reviewed and approved in accordance with this subpart 1837.2; and

(d) Persons or organizations providing advisory and assistance services to NASA must be free from conflict of interest as delineated in FAR subpart 9.5, Organizational Conflicts of Interest, and NFS subpart 1809.5. When considering advisory and assistance service arrangements with former Government employees, compliance with NFS 1803.7001 and 18 U.S.C. 207 is required.

1837.202-71 Public inspection.

(a) NASA's annual Appropriations Act states: "Except as otherwise provided under existing law or under an existing Executive Order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are (1) a matter of public record and available for public inspection, and (2) thereafter included in a publicly available list of all contracts entered into within twenty-four months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract."

(b) In accordance with paragraph (a) of this section, on a quarterly basis the Office of Procurement (Code HM) prepares a list for public inspection and distributes it to NASA Information Centers pursuant to NMI 1382.2 (14 CFR 1206), Availability of Agency Records to Members of the Public.

(c) Public inspection of advisory and assistance service contracts and purchase orders at NASA field installations in accordance with the Appropriations Act shall be limited to basic contract documents and modifications. Requests for copies of contracts or other data will be handled in accordance with NMI 1382.2.

1837.205 Management controls.

The contracting officer shall include a copy of the contracting officer's technical representative's report, required by NMI 5104.5, subparagraph 6.d, in each contract or purchase order file.

1837.205-70 Requests for approval.

(a) When a NASA field installation or headquarters office considers advisory and assistance services necessary and desirable, in accordance with the policy in FAR 37.202 and 1837.202-70, the requiring activity is responsible for preparing the documentation required by NMI 5104.5 and securing the prior approval of the Associate Administrator for Management (Code N).

(b) Before processing any procurement action for advisory and assistance services, the contracting officer shall provide advice, as necessary, to the requiring activity on preparing the documentation required by NMI 5104.5 and ensure that this required documentation, including the necessary concurrences/approvals, is included in the official contract or purchase order file. For any proposed requirement, regardless of dollar value, where there is uncertainty as to whether the requirement is for advisory and assistance services, the contracting officer shall make a determination. For those requirements determined to be for advisory and assistance services which have not been approved by the Associate Administrator for Management (Code N), the contracting officer shall return the procurement request to the originating office for action in accordance with NMI 5104.5. In all such cases, the contracting officer's determination is final.

1837.205-71 Negotiation of contracts.

(a) Contracting Officers shall include in all solicitations for advisory and assistance services a requirement that each offeror furnish the following information with the proposal, regardless of the pricing arrangements anticipated:

(1) The names and qualifications of principal members of the contractor organization who will be responsible for the project.

(2) The title of each official and the number of employees who will participate.

(3) The estimated number of hours that each official and employee will contribute to the proposed project.

(4) The standard billing rate per hour for each official and employee.

(b) In addition, the solicitation and the resulting contract shall require that—

(1) The contractor warrants that the rates quoted are not in excess of those charged nongovernmental clients for the same services performed by the same individuals;

(2) The Government has the right to the working papers used by the participating officials and employees of the firm or organization in connection with the project;

(3) Publication or distribution of the study, data, or related material is prohibited, except to the extent authorized by the contracting officer; and

(4) The contractor agrees that any reports regarding organizational matters (as required by the contract) shall include, when feasible and in addition to the recommendations, alternative methods to be considered and the pros and cons of each alternative.

PART 1839—ACQUISITION OF INFORMATION RESOURCES

Subpart 1839.70—NASA Procedures

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1839.7000 Scope of subpart.
1839.7001 Policy.
1839.7002 Applicability.
1839.7003 Requests from installations.
1839.7003-1 Responsibility.
1839.7003-2 Request format.
1839.7003-3 Submission.
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1839.7005 Coordination.
1839.7006 DPA transmittal.
1839.7007 Numbering provisions and clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28298, July 5, 1989, unless otherwise noted.

Subpart 1839.70—NASA Procedures

1839.7000 Scope of subpart.

This subpart prescribes the internal NASA procedures to be used by installations in obtaining General Services Administration (GSA) authorization to contract for automatic data processing equipment (ADPE), telecommunications, and related resources.

1839.7001 Policy.

The Associate Administrator for Management, with the concurrence of the Assistant Administrator for Procurement, has responsibility for submitting agency procurement requests (APRs) to the GSA to obtain delegations of procurement authority (DPAs) for ADPE. Telecommunications services shall be obtained in accordance with NMI 2520.1, Communications System Management.

[55 FR 12177, Apr. 2, 1990]

1839.7002 Applicability.

This subpart is applicable to all ADPE actions for which the Federal Information Resources Management Regulation (FIRMR) requires issuance of specific DPAs.

1839.7003 Requests from installations.

1839.7003-1 Responsibility.

The installation's procurement officer is responsible for—

(a) Determining or verifying that a DPA is necessary;

(b) Ensuring that internally required approvals are sufficient to allow initiation of the acquisition;

(c) Ensuring that required documentation is uniquely identifiable, complete, adequate, severable, and readily available in files controlled by the contracting office;

(d) Timely submission to the Headquarters Office of Procurement (Code

HS) of information to be used as the basis of an APR;

(e) Conducting the acquisition in compliance with the DPA; and

(f) Initiating a request for a revised DPA if events invalidate the existing DPA or require additional or modified authorization from GSA.

[54 FR 28298, July 5, 1989, as amended at 55 FR 12177, Apr. 2, 1990]

1839.7003-2 Request format.

Headquarters will prepare an APR, consistent with the FIRMR, from information supplied by the installation. Installations shall use the format set forth below, subject to the following conditions:

(a) The exact numbering style and headings shall be used (except for parenthetical material) unless otherwise noted.

(b) Parenthetical material, except paragraph numbering, is instructional and should be omitted from the submitted document.

(c) The material should be prepared to allow verbatim incorporation into the APR that NASA will submit to GSA. Note that internal material of interest only to Headquarters, as may be required by the parenthetical notes, will be deleted.

Format

Request for DPA

Date:

1. *Installation information:*

(i) (Installation name)

(ii) Procurement contact: (name/title/telephone no.)

(iii) Technical contact: (name/title/telephone no.)

2. *Project title and description:*

(i) Project title: (Use brief, informative name. Actual project title preferred, if suitable. Provide a brief description of the nature and scope of the program the acquisition will support. The description may be as technical as necessary, but ensure that a nontechnical, non-ADPE reader can, in general, understand the request.)

(ii) Existing components: (Provide a brief but specific description of the major system components, including ADPE configuration, or services currently supporting the program. Limitations dictating the present action may be mentioned).

(iii) To-be-acquired: (Provide a brief but specific description of the major system components or services to be acquired during the system life of the requirement. The reason for the buy should be made clear, if not already covered above. Describe resources required for system expansion, e.g., anticipated augmentations, upgrades, and other system modifications during the system life if such requirements will be included in the solicitation as evaluated options. (Note that the DPA provided by GSA will be limited to acquisition of the resources described in this section.))

3. *Acquisition strategy:*

(i) (Indicate whether or not the proposed procurement approach is to satisfy a requirement using a specific make and model; whether compatibility-limited requirements will be used on either a mandatory or nonmandatory basis; and the type of contract expected to be used.)

(ii) Solicitation will be issued: ______ Qtr FY ______.

Contract will be signed: __________Qtr FY ______.

(iii) This request does not involve a pilot or prototype. (If preceding statement is not true, replace it with a description of the strategy for follow-on implementation.)

(iv) (Indicate the contemplated type of competition, i.e., full and open, full and open after exclusion of sources, or other than full and open. If the last, cite the appropriate circumstance at FAR 6.302.)

4. *Estimated contract life and cost:*

Type of request	Estimated contract cost	Estimated contract life
ADPE System........	Contr. $XXX .... Option $XXX	Firm (yrs/mos). Option (yrs/mos).

The estimated system life is ______ years. (Use applicable parts of above sample. "Type of Request" typically includes ADPE System Replacement or Augmentation, Proprietary Software, Equipment Maintenance, Other ADP Services. Include all options. Note that contract cost is specified, not overall system life cost. Detailed cost breakout may be attached for clarification. The delegation will be limited to the quantities and periods indicated.)

5. *Regulatory compliance:*

(i) All of the applicable regulations have been reviewed and complied with. No waivers are contemplated. (Alternatively, list those deviations from the FIRMR for which approval is sought, and provide an explanation for each in accordance with FIRMR subpart 201-1.4 (41 CFR subpart 201-1.4). Any deviations from the FAR or NASA FAR Supplement shall be handled in accordance with FAR subpart 1.4. They shall not be listed here.)

(ii) The following documentation has been prepared and conforms with NFS 1839.7003-1(c): (Enter date of most recent update or

N/A as appropriate.) Identify only those documents noted below. Do not send copies of documents to Code HS unless requested.

(A) (Requirements analysis, as per FIRMR 201-30.007 (41 CFR 201-30.007)).

(B) (Analysis of alternatives, as per FIRMR 201-30.009).

(C) (Performance evaluation for the currently installed ADP system, as per FIRMR 201-30.007(d)(9) and 201-34.002 (41 CFR 201-30.007(d)(9) and 201-34.002)).

(D) (Findings to support the use of compatibility-limited requirements, as per FIRMR 201-30.009-3 (41 CFR 201-30.009-3)).

(E) (Software conversion study, as per FIRMR 201-30.012-1 (41 CFR 201-30.012-1)).

(F) (Certified data to support a contemplated requirement available from only one responsible source, as per FIRMR 201-11.002(b) (41 CFR 201-11.002(b)).

(G) (Justification to support a contemplated requirement using a specific make and model, as per FIRMR 201-11.002-1 (41 CFR 201-11.002-1)).

(H) (Description of those planned actions necessary to foster competition for subsequent acquisitions, as per FIRMR 201-30.012 (41 CFR 201-30.012)).

6. *Remarks:*

(Provide any additional necessary information concerning any of the above special conditions associated with this acquisition; e.g., required building construction or modification by GSA. Indicate any special problems or conditions regarding funding or ADP acquisition plan approvals. Indicate the urgency of the acquisition.)

7. *References:*

(Provide previous NASA control numbers and GSA case numbers specifically related to the requested action. Reference any significant meetings or other events involving NASA or GSA that may have a major bearing on the action.)

8. *Submitted by:*

(Typed name and signature of procurement officer)

[54 FR 28298, July 5, 1989, as amended at 55 FR 12177, Apr. 2, 1990]

1839.7003-3 Submission.

Forward two copies of requests for DPAs to the Assistant Administrator for Procurement (Attn: Code HS). Allow a minimum of nine weeks for processing.

[55 FR 12177, Apr. 2, 1990]

1839.7004 ADP acquisition plans.

(a) When NHB 2410.1 provides for approval of an ADP acquisition plan at the local level, a copy of the approved plan shall be enclosed with the request for a DPA unless it has previously been sent to Code NTD.

(b) The existence of a copy of the acquisition plan in the contract file does not in and of itself meet the documentation criteria set forth in NFS 1839.7003-1(c).

[54 FR 28298, July 5, 1989, as amended at 55 FR 12177, Apr. 2, 1990]

1839.7005 Coordination.

(a) Requests for DPAs are subject to general review, comparison with acquisition plans, and discussion between Codes HS and NTD before submission of an APR to GSA.

(b) Communications with GSA regarding APRs shall be through the Headquarters Information Resources Management Policy Division (Code NTD), unless that office directs otherwise. Installations may respond to contacts initiated by GSA, but should inform Code NTD of the contact and its nature.

(c) NASA will not normally make presentations to GSA regarding APRs unless requested by GSA. Any exceptions are subject to coordination by Codes HS and NTD.

[55 FR 12177, Apr. 2, 1990]

1839.7006 DPA transmittal.

GSA's delegations of procurement authority to NASA are transmitted to the Associate Administrator for Management or designee (Code NTD), and are in turn sent to the appropriate procurement officer by transmitting the signed DPA with a cover letter containing additional instructions and guidance. Questions regarding the DPA shall be referred to Code NTD.

[55 FR 12177, Apr. 2, 1990]

1839.7007 Numbering provisions and clauses.

When adherence to the FIRMR results in the use of provisions or clauses not prescribed in the FAR or NFS, use the FIRMR number and FIRMR provision or clause title.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1842—CONTRACT ADMINISTRATION

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28299, July 5, 1989, unless otherwise noted.

Subpart 1842.1—Interagency Contract Administration and Audit Services

1842.101 Policy.

It is NASA policy to optimize the use of contract administration, audit, and related support functions of the Department of Defense (DOD) and other Government agencies. NASA agreements with Government agencies regarding the delegation and performance of contract administration and related field support functions are the responsibility of the Defense and Intergovernmental Relations Division (Code XD). However, questions may be directed to the Procurement Policy Division (Code HP). NASA retains technical direction of all its contracts regardless of the agency responsible for contract administration.

1842.102 Procedures.

DOD contract administration and audit offices will accomplish the delegated functions in accordance with DOD regulations and procedures, except that the following take precedence over DOD regulations and procedures:

(a) NASA letters of delegation, including any special instructions attached to them.

(b) Applicable requirements of NASA Quality Publication NHB 5300.4(2B), Quality Assurance Provisions for Government Agencies.

(c) Any written agency agreements between NASA and DOD.

1842.102-70 Management of subcontracts.

Because prime contractors are responsible for managing subcontracts, contract administration functions shall be performed by the Government for subcontracts only if necessary to meet specific NASA requirements. Delegations for contract administration at subcontractors' plants normally shall be made by or through the contract administration offices responsible for the prime contractors. When a direct delegation is made for performance of contract administration functions at a subcontractor's plant (such as for quality assurance), the contracting officer shall:

Coordinate in advance with the contract administration office responsible for the prime contractor and provide copies of the delegation to that office.

[54 FR 28299, July 5, 1989, as amended at 55 FR 12177, Apr. 2, 1990]

1842.170 Assignment of NASA personnel at contractor plants.

(a) NASA personnel normally shall not be assigned at or near a contractor's facility to perform any contract administration functions listed in FAR 42.302(a). Before such an assignment is made, a written request shall be forwarded to the cognizant program director for approval and the concurrence of the Assistant Administrator for Procurement. The following supporting information shall be forwarded with the request to make the assignment:

(1) A statement of the special circumstances that necessitate the assignment.

(2) The contract administration services to be performed.

(3) A summary of any discussions held with the cognizant contract administration organization.

(4) A staffing plan covering three years or such shorter period as may be appropriate. The provisions of this paragraph (a) do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by 1842.101 and paragraph (b) of this section, unless they are performing any contract administration functions listed in FAR 42.302(a), or to personnel assigned to contractors' plants on NASA or other Federal installations.

(b) NASA may assign technical personnel (such as quality assurance, reliability, or engineering representatives) to contractors' plants or laboratories to provide direct liaison with NASA and technical assistance and guidance to the contractor and DOD. The duties and responsibilities of these technical representatives shall be clearly defined and shall not conflict with, duplicate, or overlap with functions delegated to DOD personnel. NASA shall advise appropriate DOD and contractor organizations of the duties and responsibilities of NASA technical personnel. When NASA technical personnel are performing any of the contract administration functions listed in FAR 42.302(a), paragraph (c) of this section applies.

(c) When a NASA resident office and a DOD contract administration office are performing contract administration functions for NASA contracts at the same contractor's facility, the two offices shall execute a written agreement clearly establishing the relationship between the two organizations and the contractor. The agreement should eliminate duplication in the performance of contract administration functions and minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned and shall specify the relationship of NASA nonprocurement resident personnel to their DOD and contractor counterparts if such personnel are, or intend to be, involved in any aspect of contract administration.

1842.171 Contractor performance at a NASA installation.

When a NASA contract requires contractor performance at another NASA installation or NASA-controlled launch site, a delegation shall be made to the contracting office of the NASA installation at which performance will occur. Delegations normally will include the functions listed in FAR 42.302(a), less any functions retained under 1842.202. In addition, delegations shall include the contracting officer security functions (when required in the performance of the contract at the installation or site) and the administration of any NASA support provided to the contractor.

1842.172 Contract administration by DOD personnel at a NASA installation.

If DOD personnel will perform contract administration functions at a NASA installation for more than 30 workdays (either continuous or intermittent), the NASA contracting officer shall obtain prior approval from the head of the installation where the DOD personnel will be located. The concurrence of the Assistant Administrator for Procurement shall also be obtained, through Headquarters Code HP. Such approvals will normally be governed by the following conditions:

(a) The delegation of any functional area (e.g., production, property administration, or quality assurance) shall include all administrative responsibilities for that functional area listed in FAR 42.302(a) that the DOD contract administration office is capable of performing.

(b) The contract administration office shall direct the delegated functions.

1842.173 Reimbursement for contract administration services.

The basis for reimbursement to DOD for contract administration and related support services is the NASA-DOD Agreement for Contract Administration and Contract Audit Services. Budgeting, funding, and payment for these services shall be accomplished in accordance with NMI 7410.1, Budgeting, Funding and Payment for Contract Administration and Related Field Services Performed by Others.

The NASA installation issuing the delegation has responsibility for budgeting, funding, and payment of bills of lading for transportation performed as a result of a traffic management delegation.

1842.174 Reporting requirements.

(a) NASA installations shall assess their delegations to DOD semiannually to determine changes in delegation patterns that could:

(1) Result in significant increases or decreases in future DOD manpower requirements or

(2) Have other important impacts on DOD contract administration activities.

Events such as major program cutbacks or expansions, changes in locations of major programs, and sizeable new procurements should be considered in the assessment.

(b) When an event will affect DOD's administration of contracts for NASA significantly, a summary of the assessment shall be submitted to the Assistant Administrator for Procurement (Code HP). The summary shall include at least—

(1) A description of the change in work requirements or delegation pattern;

(2) The estimated duration of the impact; and

(3) A prediction of the impact on DOD in terms of changes in manpower requirements or other costs.

(c) NASA installations shall discuss with appropriate DOD contract administration offices the predicted impact on DOD. The results of these discussions, such as DOD agreement or disagreement with the predicted impact, shall be included in the report.

1842.175 Functional management responsibility.

NASA contracting officers retain functional management responsibility for their contracts. Utilization of the contract administration services of another Government agency or NASA installation does not relieve the NASA contracting officer of responsibility for proper and effective management of the contract. Therefore, the NASA contracting officer must ensure that the contract administration office understands the respective duties and responsibilities of each office in connection with each NASA contract. NASA contracting officers shall keep themselves fully informed on contractor performance and progress by establishing and maintaining effective communications with contract administration offices.

Subpart 1842.2—Assignment of Contract Administration

1842.202 Assignment of contract administration.

(a) *Withholding normal functions*—(1) *Mandatory (must be retained).* The functions listed below are the responsibility of the NASA contracting officer and may not be delegated to DOD or to another Government agency:

(i) Execution of supplemental agreements involving new procurements, spare parts, or terminations (FAR 42.302(a) (22) and (23)). However, see paragraphs (a)(2) (i) and (ii) of this section regarding negotiation.

(ii) Issuance of decisions under the Disputes clause (FAR 42.302(a)(10)).

(iii) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (FAR 42.302(a)(8)).

(iv) Approval of the completion voucher (FAR 42.302(a)(7)).

(v) Contract payment (FAR 42.302(a)(13)).

(2) *Optional (may be retained).* The functions listed below may be delegated to DOD or to another Government agency:

(i) Negotiation of settlement agreements involving partial or complete contract terminations for convenience upon request of the NASA contracting officer on NASA Form 1432, Letter of Contract Administration Delegation—Termination, and forwarding for the signature of the NASA contracting officer (FAR 42.302(a)(23)).

(ii) Negotiation of supplemental agreements for spare parts and other items selected through provisioning procedures and forwarding for the signature of the NASA contracting officer (FAR 42.302(a)(22)).

(iii) Issuance of work requests under maintenance, overhaul, and modification contracts that do not constitute an obligation of funds not available under the contract (FAR 42.302(a)(21)).

(iv) Consent to placement of subcontracts (FAR 42.302(a)(51)).

(v) Performance of transportation and packaging functions (FAR 42.302(a) (35), (36), and (37)).

(vi) Performance of reliability and quality assurance functions, including reliability and quality assurance engineering functions (FAR 42.302(a) (38), (40), and (41)).

(vii) Performance of systems support engineering functions (as differentiated from production and reliability, and quality assurance engineering) (FAR 42.302(a)(41)).

(b) *Withholding additional functions.* When the performance of a contract administration function other than one authorized for retention under this section 1842.202 is necessary and the function is retained for administration or modified by the NASA contracting officer, the NASA contracting officer shall:

(1) Justify, in writing, the retention or modification of that function,

(2) Obtain written approval of the justification from the procurement officer or a designee, and

(3) Include the approved justification in the contract file.

The NASA contracting officer shall then advise the contract administration office of the retention or modification of the function by means of written special instructions on NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions, accompanying the letter of delegation. For any function listed in FAR 42.302(a) that is not necessary to the administration of the contract, no notice of its retention need be issued. This paragraph (b) does not apply to contracts and situations described in 1842.203(a), 1842.171, and 1842.172.

(c) *Withholding other than normal functions.* (1) Mandatory (must be retained). The functions listed below are the responsibility of the NASA contracting officer and may not be delegated to DOD or to another Government agency:

(i) Execution of change orders.

(ii) Termination for default or for convenience of the Government.

(2) *Optional (may be retained).* The functions listed below may be delegated to DOD or to another Government agency:

(i) Negotiation of supplemental agreements resulting from change orders and forwarding for the signature of the NASA contracting officer. Before completion of negotiations, any delivery schedule change must be approved by the NASA contracting officer (FAR 42.302(b) (1)and (3)).

(ii) Negotiation of prices and execution of priced exhibits for unpriced orders issued by the NASA contracting officer under basic ordering agreements (FAR 42.302(b)(2)).

1842.202-70 Delegations to contract administration offices.

(a) *General.* The following procedures apply to delegations to contract administration offices (for delegations to audit and security offices, see 1842.202-71 and 1842.202-72, respectively):

(1) NASA contracting officers shall review contract performance requirements as early as possible in the acquisition cycle to determine the nature and extent of expected contract administration functions. This review shall be coordinated with appropriate installation activities, including program managers, to ensure that all essential requirements are incorporated in the delegation. A similar review shall be made before amending letters of delegation under paragraph (a)(6) of this section.

(2) A planning conference shall be held with representatives of the contract administration office when—

(i) A contract is expected to exceed $5,000,000;

(ii) Contract performance is required at or near another NASA installation or NASA-controlled launch site;

(iii) The delegation will impose an abnormal demand on the resources of the contract administration office receiving the delegation;

(iv) Complex contract management problems are expected; or

(v) The NASA contracting officer considers it advisable.

(3) Contracting offices shall prepare, within 15 days after contract award, NASA Form 1430, Letter of Contract Administration Delegation, General, for the delegation, redelegating, and amending of contract administration functions. NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions, shall be used to supplement NASA Form 1430 to—

(i) Delegate any optional functions listed in 1842.202 (a)(2) or (c)(2);

(ii) Modify previously delegated functions;

(iii) Retain the administration of functions other than those listed in FAR 42.302(a); or

(iv) Provide additional or peculiar information concerning the contract that may assist the contract administration office to perform the delegated contract administration responsibilities more effectively (but see paragraph (a)(4) of this section).

(4) Letters of delegation and special instructions shall not include any clauses or other requirements that are or should be contained in the contract and shall not—

(i) Cite administrative procedures or repeat the functions covered in FAR 42.302(a) or other information covered in DOD issuances;

(ii) Place restrictions on administrative contracting officers; or

(iii) Include references to NASA issuances, unless specific written NASA/DOD agreements exist that include references to these issuances, or unless the NASA issuances are a requirement of the contract. When it is appropriate to cite DOD issuances in a letter of delegation, the NASA contracting officer shall ensure that they are applicable to the contract administration office concerned (e.g., that Air Force issuances are not cited in delegations to Navy or DCAS contract administration offices).

(5) Delegations and amendments to them should be accompanied by documentation and supporting information that will ensure a complete understanding of the contract administration services to be performed. Contract administration offices shall be kept fully informed of any actions that may affect the performance of

the delegated functions. Copies of all significant documents should be furnished to the contract administration office throughout the period of performance. Significant documents include, but are not limited to—

(i) All contractual documents such as the contract and any specifications and drawings, change orders, supplemental agreements or contractor proposals referenced in the contract;

(ii) Negotiation memoranda covering negotiations of contracts or contract changes in excess of $100,000;

(iii) Copies of any delegation and amendments it sent to other contract administration offices that have a bearing on the contract, including those issued pursuant to 1842.102-70; and

(iv) Any other correspondence affecting contract performance under the contract.

(6)(i) The contracting officer shall issue amendments to letters of delegation when amendments to the contract are of a nature that will change the scope of functions previously delegated, when additional functions are required to be delegated, or when previously delegated functions are to be terminated in whole or part. However, when a contract administration office has retired the original letter of delegation with the records of a physically completed but administratively open contract, a new letter of delegation shall be issued to support any additional reimbursable services required under the delegation.

(ii) In order to minimize the need for a duplicate delegation at a later date on a contract that is nearing closeout, the NASA contracting officer shall advise the contract administration office to hold the contract in open status when conditions exist or are expected that would justify extension of the contract period of performance. Appropriate NASA forms listed in Part 1853 shall be used in the amendment process. The forms shall be clearly annotated as amendments to the original delegation.

(7) NASA Form 1431, Letter of Acceptance of Contract Administration Delegation, shall be forwarded with each NASA Form 1430 or amendment. The NASA contracting officer shall use the returned form as evidence that the delegation has been received and accepted by the contract administration office and as a reference for points of contact for each of the functional areas delegated.

(8) Delegations shall be sent to DOD contract administration offices in accordance with the instructions in the DOD Directory of Contract Administration Services Components (DOD 4105.59H).

(9) The contracting officer shall distribute copies of the contract and letters of delegation for contract administration (including amendments as follows):

(i) To DCAS and all other Government contract administration offices except DOD military contract administration offices, when two or more functional areas are delegated: Five copies of the contract and NASA Form 1430 and three NASA Forms 1431.

(ii) To DOD military component offices when two or more functional areas are delegated: Three copies of the contract and three NASA Forms 1430 and 1431.

(iii) To any contract administration office when a single functional area is delegated: Two copies of the contract and two NASA Forms 1430 and 1431.

(iv) To the contractor: One NASA Form 1430.

(b) *Reliability and quality assurance.* When special instructions for reliability or quality assurance are necessary, they shall be (1) clearly identified by the NASA installation personnel responsible for the reliability and quality assurance function and (2) furnished to the contracting officer on NASA Form 1430A for inclusion in the letter of delegation. The procedures for arranging, preparing, and finalizing such delegations and the requirements for NASA direction and management of these functions are contained in installation procedures. The latest edition of NHB 5300.4(2B), Quality Assurance Provisions for Delegated Government Agencies, describes the requirements for performing quality assurance functions under NASA contracts.

(c) *Transportation and packaging.* Transportation and packaging functions may be delegated at the option of the NASA installation personnel responsible for the transportation and packaging function. When such delegations are contemplated on a particular contract, special instructions shall be furnished to the NASA contracting officer on NASA Form 1430A. The form shall also:

(1) Specify the limit of the value of Government bills of lading that may be issued without further consent of the NASA contracting officer and

(2) Provide appropriate funding information.

(d) *Property administration and plant clearance.* Property administration and plant clearance are ordinarily delegated by NASA to DOD pursuant to FAR 42.302. When these functions are delegated, special instructions prepared and distributed by the Headquarters Supply and Equipment Management Branch, Code NIE, should be issued to the contract administration office. Property administration and plant clearance are typically retained, however, and performed by NASA when the contract work is to be performed at a NASA installation. When retained, the functions should be performed in accordance with Subpart 1845.72.

(e) *Services not requiring letters of delegation.* (1) When it is desired that a contract administration or audit office perform services that precede the award of a contract, such as cost, price, or technical evaluations (but exclusive of pre-award surveys), NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services, shall be used. Pre-award surveys shall be requested on SF 1403, Preaward Survey of Prospective Contractor (General). Oral requests made to contract administration offices to expedite these services are authorized, but shall be confirmed in writing immediately through the use of NASA Form 1434 or SF 1403, as appropriate.

(2) Pre-award and post-award services, such as verification of labor and overhead rates, and furnishing of similar information readily available within contract administration and audit offices and not normally subject to reimbursement by NASA, may be obtained either orally without written confirmation or through the use of NASA Form 1434, as appropriate.

1842.202-71 Delegations to audit offices.

The following procedures apply when delegations are made to audit offices:

(a) NASA installations shall utilize the services of other Government audit organizations for performance of contract cost audit and other audit functions, except when audits will be performed by NASA auditors. The Defense Contract Audit Agency (DCAA) has been designated as the DOD agency responsible for the performance of audit functions for NASA contracts, except those awarded to educational institutions for which other agencies have audit cognizance under OMB Circular No. 88, those with Canadian contractors (see paragraph (d) of this section), and those for which NASA will perform audits. To ensure that audit services are performed expeditiously, audit delegations shall be sent to the appropriate audit office immediately after execution of all cost-reimbursement, labor-hour, and time-and-materials contracts and all fixed-price contracts containing cost-reimbursement or price adjustment clauses. Audit functions include but are not limited to contract cost and price audits, estimating systems surveys, reviews of accounting systems (see also 1815.871(b)), and approval of vouchers for provisional payment.

(b)(1) Delegations shall be sent to cognizant audit offices as listed in the Defense Contract Audit Agency Directory (Headquarters and Field Offices) or in other Government agency directories.

(2) Audit responsibilities for the Department of Health and Human Services (HHS) do not include reviewing and processing vouchers. Consequently, where audit responsibility has been delegated to HHS under OMB Circular No. A-88, contracts shall not designate HHS as the billing office for invoice submission. Instead, contracts should direct invoices to the office administering the contract or as otherwise arranged (see SF 26, Block 10, and SF 33, Block 23).

(c)(1) NASA Form 1433, Letter of Audit Delegation, shall be used to delegate the audit function and to amend previous delegations. Distribute copies of the contract and NASA Form 1433 as follows:

(i) Audit office: One copy of the contract and three NASA Forms 1433.

(ii) Contractor: One NASA Form 1433.

(iii) Cognizant NASA fiscal or financial management office: One NASA Form 1433.

(2) When HHS is designated as the audit office, item 12 on NASA Form 1433 shall be marked "Not applicable."

(d)(1) For contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defense Production (Canada) (DDP) in accordance with agreements between NASA and DDP. Audit reports are furnished to DDP. Upon advice from DDP, CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(2) For contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer.

(3) Audits performed by the Audit Services Branch are normally conducted under DDP regulations.

1842.202-72 Delegations to security offices.

NASA's policies and procedures on security are set forth in NMI 1650.1, Industrial Security Policies and Procedures. Contracting officers shall delegate responsibility for administering the Industrial Security Program (which has been designated as an administrative contracting officer (ACO) responsibility in Appendix C, Industrial Security Regulation, DOD 5220.22R, see also FAR 42.302(a)(20)) to DOD unless the contractor will perform the classified contract on a NASA installation or the classified work has been "carved-out." (A "carve-out" is defined in Section 1, paragraph 3, item f.1., of the DOD Industrial Security Manual for Safeguarding Classified Information, September 1987, DOD 5220.22M, as a classified contract issued in connection with an approved Special Access Program in which the Defense Investigative Service has been relieved of inspection responsibility in whole or in part.) The basis for DOD's performance of administrative contracting officer responsibility for the Industrial Security Program on NASA contracts is a NASA-DOD Agreement. The contracting officer shall specifically identify security functions delegated to DOD or to another NASA installation (see 1842.171) on NASA Form 1430A.

1842.203 Retention of contract administration.

The assignment of contract administration is optional for the contracts and situations listed below:

(a) Research and development study contracts not involving deliverable hardware or Government property in the hands of contractors.

(b) All contracts with delivery schedules of 90 days or less.

(c) Purchase orders having no Government source inspection requirements.

(d) Work performed at the installation awarding the contract.

(e) Contract work performed in the vicinity of the installation awarding the contract for which DOD contract administration services are not reasonably available.

1842.270 Contracting officer's technical representative (COTR) delegations.

(a) A contracting officer may designate an appropriate Government employee to act as the contracting officer's authorized representative in administering a particular contract. If necessary, the contracting officer may

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designate an alternate COTR to act during short absences of the COTR; the policies and procedures for COTRs shall apply also to alternate COTRs. Technical organizations are responsible for ensuring that the individual they recommend to the contracting officer possesses qualifications and experience commensurate with the authorities to be delegated and the nature of the contract. The contracting officer shall ensure that the duties and responsibilities delegated do not exceed the limitations at 1801.670(b).

(b) COTRs shall be designated by name and position title (see the 1801.670(b) prohibition against delegating COTR duties solely to a position rather than to a named individual). Each COTR designation shall be in writing and shall clearly define the scope and limitations of the COTR's authority. NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation, shall be used to designate COTRs. The COTR delegation shall be signed by an appropriate contracting officer (see 1801.670(b)) and shall state that the duties delegated are not redelegable and that the COTR may be personally liable for unauthorized direction. (However, this does not prohibit the COTR from having assistants for the purpose of monitoring contractor progress and gathering information.) When an individual is to act for a contracting officer on more than one contract, separate delegations shall be issued for each contract. A separate NASA Form 1634 may be modified as necessary to designate an alternate COTR; alternates may act only during official absences of the COTR such as leave, TDY, or other special assignments. The delegated duties of the alternate may not exceed those of the COTR.

(c) A COTR delegation remains in effect throughout the life of the contract unless cancelled in writing by an appropriate contracting officer. The contracting officer may modify the scope and limitations of a COTR assignment only by cancelling the delegation and issuing a new delegation.

(d) A COTR may not be authorized to initiate procurement actions by use of purchase orders or to place calls or delivery orders under indefinite-delivery contracts or basic ordering agreements. A COTR may not be authorized to award, agree to, or sign any contract or modification or in any way obligate the payment of money by the Government. The COTR is not authorized to issue technical direction unless the clause at 1852.242-70, Technical Direction, prescribed in 1842.7001, is included in the contract and the authorization is specifically listed in paragraph 3(m) of the COTR delegation letter (NASA Form 1634). However, delegations may be made to construction contract COTRs to sign emergency change orders with an estimated value not to exceed $2,500, onsite at construction sites, if sufficient funds have been certified to cover the emergency change.

(e) The contracting officer shall send the original and one copy of the COTR delegation letter to the COTR, who shall be required to acknowledge receipt by signing the original and returning it to the contracting officer. The original of the COTR delegation letter shall be filed and retained in the applicable contract file. Copies of the COTR delegation letter shall be distributed to the contractor and to each cognizant contract administration office. Acknowledgement and distribution for terminations of COTR delegations and COTR delegations that revise duties shall follow the same rules.

Subpart 1842.3—Contract Administration Office Functions

1842.302 Contract administration functions.

The cognizant CAO shall perform the additional contract administration functions listed below:

(a) Determine billing rates and final indirect cost rates.

(b) Issue cure and show cause letters after approval of the NASA contracting officer.

(c) Monitor the contractor's system for control of overtime.

(d) Assure that overtime compensation is in accordance with the terms of the contract, or in the absence of contractual coverage, that any excepted overtime charged is reasonable and properly allocable.

(e) Negotiate changes to interim billing prices when authorized by the NASA contracting officer.

1842.302-70 Modified functions.

In connection with the functions listed at FAR 42.302(a)(11)(ii) and (iii), the following exception applies: for those contractors with whom advance agreements of the type discussed in FAR 31.205-18 are negotiated, the Government contracting officer responsible for the agreements shall have full authority for determinations related to CAS 420.

Subpart 1842.7—Indirect Cost Rates

1842.705 Final indirect cost rates.

1842.705-70 NASA Policy.

(a) Since many NASA contractors are under DOD's final overhead rate determination procedure, NASA's policy is to participate jointly with DOD for those companies where NASA has a major financial interest. The NASA participant shall be a representative from that installation having the predominance of NASA work.

(b) When NASA has been assigned the final overhead rate determination authority, settlement of overhead costs shall be conducted by that installation having the predominance of NASA work.

Subpart 1842.8—Disallowance of Costs

1842.803 Disallowing costs after incurrence.

(a) Under the authority of FAR 42.803, NASA has designated the contract auditor as the contracting officer's representative for (1) promptly examining reimbursement vouchers received directly from contractors, (2) promptly transmitting vouchers approved for provisional payment to the cognizant fiscal or financial management officer, and (3), regarding costs claimed, but not considered allowable, preparing and sending to the cognizant contracting officer NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. Normally, the NASA Form 456 is initiated by the auditor; however, the contracting officer also may initiate it or direct its initiation. In accordance with any instructions received from the contracting officer, the contract auditor shall promptly examine and approve (but see paragraph (b) of this section) separate fee vouchers and fee portions of vouchers for provisional payment under the contract. After examination, the auditor shall forward completion vouchers to the contracting officer for approval and transmittal to the cognizant fiscal or financial management officer.

(b) When audit functions are delegated, special instructions may be issued to the contract auditor to—

(1) Require submission of separate vouchers for reimbursable costs and for payment of earned fee; and/or

(2) Reserve to the contracting officer approval of separate fee vouchers and all vouchers submitted by contractors performing at a NASA installation.

(c) Unless otherwise notified, the contractor shall be required to submit public vouchers to the auditor as follows:

(1) One original SF 1034, SF 1035, or equivalent contractor's attachment shall be submitted.

(2) Seven copies of SF 1034A, SF 1035A, or equivalent contractor's attachment shall be submitted.

(3) The contractor shall mark SF 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the contracting officer by inserting in the memorandum block names and addresses as follows:

(i) Copy 1, NASA contracting officer.

(ii) Copy 2, Defense Contract Audit Agency auditor.

(iii) Copy 3, Contractor.

(iv) Copy 4, Contract administration office.

(v) Copy 5, Project management office (when required by the NASA contracting officer).

(4) The auditor shall retain an unpaid copy of the voucher.

(5) When a voucher contains one or more individual direct freight charges of $100 or more, an additional copy of SF 1034A and SF 1035A shall be sub-

mitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Services Administration. When a voucher is identified as the "Completion Voucher," an additional copy shall be submitted for transmittal to the NASA contracting officer.

(d) Following a prompt and careful review of the facts and circumstances leading the auditor to initiate the NASA Form 456, and after coordination with other NASA and DOD contracting officers administering contracts with the same contractor under which a NASA Form 456, or a DCAA Form 1 in the case of a DOD contract, has been issued for the same items of cost, the contracting officer shall take one of the following actions:

(1) Countersign the NASA Form 456 disapproving the costs.

(2) Countersign the NASA Form 456 suspending the costs.

(3) Issue a new NASA Form 456 suspending the costs rather than disapproving them pending resolution of the issues.

(4) Have the contractor issue a new voucher removing the costs in question from its claim and return the NASA Form 456 to the auditor unsigned.

(5) Return the unsigned NASA Form 456 to the auditor with a detailed explanation of why the suspension or disapproval is not being countersigned, and process the contractor's claim for payment.

(e) The contracting officer, when in agreement with the NASA Form 456 initiated by the auditor, shall assign a notice number and shall countersign the form. An original and three copies (which includes two acknowledgement copies, one each for return to the contracting officer and the auditor) of the form shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the SF 1034 and each copy of the SF 1034A (see paragraph (c) of this section) on which the deduction is made, and one copy shall be sent to the auditor.

(f) The total amount suspended or disapproved, as shown on the NASA Form 456, shall be inserted in the Differences block of the SF 1034 and SF 1034A, citing the applicable NASA Form 456.

(g)(1) If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to this and subsequent public vouchers until the amount is fully liquidated. The deductions on any voucher may not exceed the voucher amount, to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action.

(2) If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to NASA, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract, unless those contracts contain a "no set-off" provision. If a set-off is effected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

(h) When necessary, the contracting officer should consult with the auditor or the financial management officer concerning preparation, examination, and payment of vouchers. Functions to be performed by auditors and financial management and fiscal office personnel during the examination of vouchers are in FMM 9630.

Subpart 1842.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

1842.1004 Location of negotiators in a central office.

Within NASA, the central office responsible for advance agreements is the Contract Pricing and Finance Office (Code HC), Office of Procurement, NASA Headquarters.

1842.1008 Administrative appeals.

The NASA administrative appeals hearing group consists of the Assistant Administrator for Procurement, who shall be chairman, the Deputy Associate Administrator for Aeronautics and Space Technology, and the Deputy General Counsel.

Subpart 1842.12—Novation and Change-of-Name Agreements

1842.1200 Scope of subpart.

This subpart implements and supplements FAR subpart 42.12 and prescribes policies and procedures for processing novation or change-of-name agreements initiated by either a NASA installation or by DOD on behalf of NASA.

1842.1202 Responsibility for executing agreements.

When none of the affected contracts has been assigned to an administrative contracting officer (see FAR 42.1202(a)(2)), the contracting officer shall require the contractor to provide the documentation enumerated in FAR 42.1204(c)(or, as appropriate, FAR 42.1205(a)) to the NASA installation with which it has the largest amount of unliquidated obligations. This installation shall be the "designated installation" for processing and executing novation agreements and change-of-name agreements with the contractor.

1842.1203 Processing agreements.

(a) The installation shall immediately notify the Assistant Administrator for Procurement (Code HM) of the request to execute a novation (successor-in-interest) or change-of-name agreement. The notification shall include:

(1) The names of the firms involved,

(2) The name of the installation that will execute the agreement, and

(3) The type of agreement.

(b) When the Standard Form 30 required by FAR 42.1203(f)(1) is prepared, a supplemental agreement number need not be obtained for contracts other than the one under which the supplemental agreement is written. For distribution purposes, the Standard Form 30 shall also include the names and addresses of the installations with contracts subject to the agreement.

(c) After execution of the supplemental agreement, the designated installation shall—

(1) Forward one authenticated copy to Code HM; and

(2) Advise each of the affected installations by letter of the consummation of the supplemental agreement, requesting that an administrative change be issued for each affected contract and enclosing a copy of the supplemental agreement.

(d) For each affected contract, the contracting officer shall prepare an administrative change acknowledging the successor-in-interest or the change in name. The administrative change shall receive the same distribution as the affected contract. It shall indicate the nature of the transaction and the result attained and shall cite the number of the contract with which the original relevant documents and supplemental agreement are filed.

1842.1203-70 DOD processing of novation and change-of-name agreements on behalf of NASA.

(a) Appendix E of the NASA/DOD Agreement for Contract Administration and Contract Audit Services covers the accomplishment of novation and change-of-name agreements by DOD on behalf of NASA.

(b) Code HS shall notify installations when DOD is processing a proposed novation agreement on behalf of NASA. Within 20 days after receiving it, the installation shall submit comments to Code HS for transmittal to DOD. With the concurrence of Code HS, an installation may execute a separate agreement with the contractor. In that event, Code HS shall notify DOD accordingly, and the installation shall process a separate agreement in accordance with FAR 42.1203.

(c) Code HM shall maintain copies of agreements executed by DOD on behalf of NASA.

Subpart 1842.14—Traffic and Transportation Management

1842.1405 Discrepancies incident to shipment of supplies.

In addition to following the applicable regulations and procedures referenced at FAR 42.1405(a), NASA personnel shall report discrepancies and adjust claims for loss of and damage to

Government property in transit as prescribed in NHB 6200.1, NASA Transportation and General Traffic Management.

Subpart 1842.70—NASA Contract Clauses

1842.7001 Technical direction.

The contracting officer shall insert the clause at 1852.242-70, Technical Direction, in cost-reimbursement solicitations and contracts if (1) technical direction as defined in the clause (which includes the Government's approving approaches and solutions of the contractor and shifting emphasis among work areas or tasks) is appropriate to accomplish the contract requirements effectively, (2) the statement of work is conducive to technical direction by the Government, and (3) technical direction is to be in writing. Identify this duty in paragraph 3(m), "Other duties as follows" of NASA Form 1634 (see 1842.270). This clause addresses COTR responsibilities that are in addition to those discussed in paragraphs 3(a)-(1) of the COTR delegation and is not intended to be followed in fulfilling those other responsibilities. The clause is not authorized for use with institutions of higher education and other non-profit organizations.

1842.7002 Travel outside of the United States.

The contracting officer shall insert the clause at 1852.242-71, Travel Outside of the United States, in cost-reimbursement solicitations and contracts where a contractor may travel outside of the United States and it is appropriate to require Government approval of the travel.

[54 FR 28299, July 5, 1989, as amended at 55 FR 27089, June 29, 1990]

1842.7003 Observance of legal holidays.

(a) The contracting officer shall insert the clause at 1852.242-72, Observance of Legal Holidays, in contracts when notification to the contractor of Government holidays would be useful in administering the contract.

(b) The clause shall be used with its Alternate I in cost reimbursement contracts when work will be performed at a NASA installation and it is desired that contractor employees not have access to the installation during Government holidays. This alternate may be appropriately modified for fixed-price contracts.

(c) The clause may be used with its Alternate II in cost reimbursement contracts when work will be performed at a NASA installation and it is desired that administrative leave be granted contractor personnel in special circumstances, such as inclement weather or potentially hazardous conditions.

[54 FR 28299, July 5, 1989, as amended at 54 FR 39374, Sept. 26, 1989]

PART 1843—CONTRACT MODIFICATIONS

Subpart 1843.2—Change Orders

Sec.

1843.205 Contract clauses.
1843.205-70 NASA contract clause.
1843.270 Originating engineering change proposals.

Subpart 1843.3—Forms

1843.301 Use of forms.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28306, July 5, 1989, unless otherwise noted.

Subpart 1843.2—Change Orders

1843.205 Contract clauses.

As permitted by the clause preface, when the clause at FAR 52.243-1, 52.243-2, or 52.243-3 (Changes—Fixed-Price, Changes—Cost-Reimbursement, or Changes—Time-and-Materials or Labor-Hours) is used, the 30-day period within which the contractor must assert its right to an adjustment may be varied not to exceed 60 days.

1843.205-70 NASA contract clause.

(a) The contracting officer may use the clause at 1852.243-70, Engineering Change Proposals, in contracts to require the contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change. The term "price" in paragraph (b) of the clause may be changed to suit the specific type of contract. A local format may be substituted for the second reference in clause paragraph (a) to DOD-STD-480A. The basic clause is suitable for fixed-price contracts.

(b) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(c) If the contract is a cost-reimbursement contract, the contracting officer shall use the clause with its Alternate II.

1843.270 Originating engineering change proposals.

Either party to the contract may originate engineering changes. The originator must provide detailed information supporting and documenting the proposed change so that the Government can evaluate the technical, cost, and schedule effects of implementing the change and can price the change in advance, when possible.

Subpart 1843.3—Forms

1843.301 Use of forms.

(a) FAR 43.301(a)(1) requires the use of Standard Form 30, Amendment of Solicitation/Modification of Contract, for administrative changes such as changes in accounting and appropriation data. Contract modifications should include only fund citations (i.e., accounting and appropriations data) applicable to the particular modification. The cumulative inception-to-date listing of funding citations for previous modifications is discouraged unless there is a contractual need requiring such a listing. Modifications should include, as a minimum, the prior total funding, the change taking place, and a new total value.

(b) When an internal administrative change of funding citations relative to a contract is required, the official determining the need for the change shall request it, obtain applicable installation approvals, and then forward documentation to the financial management officer and the contracting officer to facilitate it. An administrative modification of the contract is not required unless it affects the billing or reporting requirements placed upon the contractor.

(c) These procedures do not reduce the contracting officer's responsibility for ensuring that obligations are made only on the basis of appropriated funds.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1844.1—General

Sec.

1844.102 Policy.
1844.102-70 Special contracting officer consent requirements for critical subcontracts.
1844.102-71 Headquarters review of critical subcontracts.
1844.102-72 New sources of scientific and technical competence.
1844.170 NASA contract clause.

Subpart 1844.3—Contractors' Purchasing Systems Reviews

1844.302 Requirements.
1844.302-70 Contractors' purchasing systems reviews conducted by the Department of Defense.
1844.302-71 NASA-conducted contractors' purchasing systems reviews.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28307, July 5, 1989, unless otherwise noted.

Subpart 1844.1—General

1844.102 Policy.

1844.102-70 Special contracting officer consent requirements for critical subcontracts.

If the contracting officer (in conjunction with the technical representative, when appropriate) determines that a proposed subcontract may be critical because of special considerations in the source selection or in the incentive arrangements, or for other reasons, a requirement shall be included in the Schedule of the prime contract (if not already provided for in the standard subcontracts clause) for the contracting officer to be notified of and consent to the critical subcontract before its award by the contractor.

1844.102-71 Headquarters review of critical subcontracts.

(a) If a requirement is established by the Headquarters source selection official or the Assistant Administrator for Procurement for a Headquarters review of a critical subcontract prior to its award, the contracting officer shall—

(1) Require consent as specified in 1844.102-70; and

(2) Before consenting to the subcontract, submit to the Assistant Administrator for Procurement (Code HS) for review—

(i) The subcontract;

(ii) Contractor documentation in support of the subcontract (including that required by the notification provisions of the subcontracts clause); and

(iii) The contracting officer's review and evaluation (in accordance with FAR 44.202), with appropriate recommendations.

(b) Consent shall not be granted by the contracting officer until notification (with limitations and objections, if any) is received from the Assistant Administrator for Procurement.

1844.102-72 New sources of scientific and technical competence.

As a Government agency whose mission involves substantial Federal expenditures and use of national resources, NASA has a strong interest in helping accomplish collateral national economic goals within the framework of applicable statutory and administrative authority in a way that will not impair program effectiveness. Utilization in the space program and the accompanying development of the potential of all geographical regions will effectively contribute to achieving national goals. To advance the further development of competence and capacity of sources, NASA encourages the placing of subcontracts over wider geographic areas. To carry out these objectives, the clause at 1852.244-70, Geographic Participation in the Aerospace Program, shall be used as prescribed at 1844.170.

1844.170 NASA contract clause.

The contracting officer shall insert the clause at 1852.244-70, Geographic Participation in the Aerospace Program, in all research and development solicitations anticipated to exceed $500,000 and in resulting contracts of $500,000 or over to be performed within the United States.

Subpart 1844.3—Contractors' Purchasing Systems Reviews

1844.302 Requirements.

1844.302-70 Contractors' purchasing systems reviews conducted by the Department of Defense.

(a) Under FAR 42.202 and 42.302(a)(50), assignment of contract administration automatically confers authority to conduct a contractor purchasing system review (CPSR) and approve or disapprove a contractor's purchasing system. In accordance with FAR 44.307, when assigning contract administration to a DOD contract administration office, the contracting officer shall include in the letter of delegation of contract administration functions a requirement for the contract administration office to send one copy of each CPSR summary report to the cognizant NASA contracting officer.

(b) NASA installations desiring to provide full-time participants for any DOD CPSR shall forward a request for such participation to the Assistant Administrator for Procurement (Code HM) for approval. Incidental assistance by NASA personnel to DOD personnel who are performing CPSRs for NASA does not require Headquarters approval.

(c) Contracting officers shall advise the cognizant DOD contract administration office of weaknesses in a contractor's purchasing system that have come to light during the review of subcontracts or from other sources.

(d) Contracting officers are responsible for reviewing DOD summary reports (which include present system status, comments, conclusions, recommendations, and significant changes effected since the review) and notifications to contractors. When there is a determination that is at variance with the summary report or actions taken by DOD, the contracting officer shall forward a request for approval of alternative actions, with justification, to Code HM. Similarly, a contracting officer desiring the withdrawal of a DOD approval of a contractor's purchasing system on the basis of a determination that there has been a deterioration of the system, or to otherwise protect the Government's interests shall forward a request for such withdrawal to Code HM with appropriate justification.

1844.302-71 NASA-conducted contractor's purchasing systems reviews.

If a NASA activity is the cognizant contract administration office, that office may use DAR Supplement No. 1, Contractor Purchasing System Review (CPSR) Program, as incorporated in the DOD FAR Supplement, as a guide.

PART 1845—GOVERNMENT PROPERTY

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SOURCE: 54 FR 28308, July 5, 1989, unless otherwise noted.

Subpart 1845.1—General

1845.102 Policy.

(a) One reason for the policy in FAR 45.102 that contractors shall ordinarily furnish all property is that providing Government property (whether Government-furnished or contractor-acquired) increases the Government's administrative burden and requires recordkeeping and personnel. Providing property may dilute the contractor's overall responsibility and weaken guarantees, end-item delivery requirements, and other contract terms. Furnishing property places NASA between the source of the property and the contractor. When NASA assumes responsibility for scheduling delivery of the property, NASA may be responsible for delays.

(b) Nevertheless, sometimes providing Government property to contractors may be essential to contract performance or otherwise advantageous to NASA. For example, furnishing standardized production property and raw materials may be necessary for uniformity of products. Furnishing Government property can reduce the production cycle by eliminating the lead time necessary for the contractor to acquire or fabricate production property. NASA may be able to broaden its competitive base by offering property to firms unable to acquire their own, or by offering production property or critical material not generally available throughout the industry. NASA may lower contract costs by offering existing Government property or new Government property obtainable at prices lower than those available to the contractor. NASA may also provide Government property to educational or other nonprofit institutions to facilitate scientific research.

(c) NASA has several types of contract property accountability options. The selection of the combination of Government property clauses for a given contract is dependent upon variables such as whether performance is on-site at a NASA installation, contract purpose, and the degree of contractor management independence that is inherent in the statement of work (see 1845.102-70(b)).

[54 FR 28308, July 5, 1989, as amended at 54 FR 39374, Sept. 26, 1989]

1845.102-70 Procedures.

(a) The contracting officer shall, as applicable, include in each solicitation a—

(1) List of any Government property (showing location and condition), including Government-owned tooling, that will be furnished for the performance of the contract and any related special provisions;

(2) Requirement that information be furnished regarding (i) any Government-owned facilities or items of industrial equipment or special tooling requested to be used in performing the contract, (ii) their acquisition cost, (iii) identification of the Government contract under which the property is accountable, (iv) rental provisions, and (v) other relevant matters;

(3) Requirement that additional facilities that the offeror requests to be provided by the Government be described and identified by category, such as "Land," "Buildings," and "Equipment" (see subpart 1845.71); and

(4) Requirement that additional special test equipment that the offeror requests to be provided by the Government be described and its intended use, estimated cost, and proposed location be shown.

(b) To ensure the contract property accountability option selected is appropriate for a particular contract and is in consonance with installation resources and policies regarding use of Government property, the contracting officer shall, as part of the solicitation/contract review process, provide a copy of the solicitation/contract to the installation supply and equipment management officer (SEMO) for review. It shall be the responsibility of the SEMO to provide comments or recommendations to the contracting officer within the review time specified. In circumstances where an award of a contract is contemplated, and a solicitation was not issued (e.g., contracts resulting from broad agency announcements and unsolicited proposals), the contracting officer shall provide a copy of the contract prior to award to the installation SEMO for review and comment. The contracting officer shall provide this opportunity for SEMO review and comment as a part of the solicitation/contract review process for procurements with an estimated cost over $1,000,000 or for procurements with an estimated cost over $50,000 (1) for work expected to be performed on-site at a NASA installation, or (2) which provide existing government property, or (3) which require contractor acquisition of Government property.

[54 FR 39374, Sept. 26, 1989]

1845.104 Review and correction of contractors' property control systems.

(a) When review of the contractor's property control system is not delegated to DOD, the NASA contracting officer or property administrator shall conduct the review as required in subpart 1845.72.

(b) In each solicitation under which use of Government property is contemplated, the contracting officer shall require the offeror to—

(1) Furnish the date of the last Government review of its property control and accounting system and describe actions taken to correct any deficiencies found;

(2) State that the offeror has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR subpart 45.5, and subparts 1845.5, 1845.70, and 1845.71 of this regulation; and

(3) State whether the costs associated with paragraph (b)(2) of this section are included in its cost proposal.

1845.104-70 Contract property administration by the Government.

DOD will conduct contract property administration in accordance with their regulations and procedures and NASA special delegation instructions. When property administration is not delegated to DOD, NASA shall conduct contract property administration in accordance with subpart 1845.72.

1845.106 Government property clauses.

In addition to the applicable Government property clauses prescribed in FAR 45.106, the contracting officer shall insert the following clause(s) and provision as appropriate.

1845.106-70 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.245-70, Acquisition of Centrally Reportable Equipment, in all solicitations and contracts that include a Government property clause. See 1845.7103 and the clause at 1852.245-70 for instructions on preparing DD Form 1419.

(b)(1) The contracting officer shall insert the clause at 1852.245-71, Installation-Provided Government Property, in solicitations and contracts when Government property is to be provided to on-site contractors, and the Government will retain accountability for the property. The contracting officer shall identify in the Contract Schedule the nature and extent of such property and the installation supply and equipment management officer will make such property available to the contractor on a no-charge-for-use basis. The contracting officer shall also list in the contract the applicable installation property management directives.

(2) Contracting officers may also use the clause if Government property is provided to off-site local support service contractors. In this case, the concurrence of the installation supply and equipment management officer must be obtained and indicated in the procurement request.

(3) To avoid diluting contractor responsibilities when they include separate procurement authority and responsibility, contracting officers may preclude such contractors from utilizing the installation's central receiving facility for receiving contractor-acquired property. To accomplish this, the contracting officer shall use the clause with its Alternate I. The contracting officer shall review the acquisitions reported by the contractor for their appropriateness, and the supply and equipment management officer shall ensure that records are established.

(4) Contracting officers shall clearly identify in a separate schedule any property provided under a Government property clause but not also subject to the clause at 1852.245-71. The contracting officer shall address any specific maintenance considerations (for example, requiring use of a central calibration facility) elsewhere in the contract.

(c) The contracting officer shall insert the clause at 1852.245-72, Liability for Government Property Furnished for Repair and Services, in fixed-price solicitations and contracts (except for experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated) for repair, modification, rehabilitation, or other servicing of Government property, if such property is to be furnished to a contractor for that purpose. If (1) a substantial quantity of parts or material will be furnished, (2) a significant amount of scrap will result from the work to be performed, or (3) other Government property will be furnished to or acquired by the contractor, the contract will also contain the appropriate Government property clause (see FAR 45.106) and the contract Schedule shall provide that such property shall be governed by the terms of that clause. When minor repairs are obtained under small purchase procedures, the procedures of this paragraph (c) shall not apply. Contracting officers shall not require additional insurance under the clause at 1852.245-72 unless the circumstances clearly indicate advantages to the Government.

(d) The contracting officer shall insert the clause at 1852.245-73, Financial Reporting of Government-Owned/Contractor-Held Property, in all contracts unless (1) it is virtually certain that Government property will not be furnished to or acquired by the contractor (e.g., as in most study contracts and certain contracts for services), (2) the only property to be provided is for the purpose of repair or servicing (see 1852.245-72), or (3) all property to be provided is subject to the clause at 1852.245-71, Installation-Provided Government Property (see paragraph (b) of this section). Reporting shall be on an annual basis except when an on-site contractor performs property acquisition and management for the Government. In these cases, the Government may require more frequent reporting, and the contracting officer shall use the clause with its Alternate I (monthly reporting) or Alternate II (quarterly reporting) as appropriate. The contracting officer shall insert in the clause the address and office code of a single organization within the cognizant NASA installation designated as the focal point for control and distribution of NASA Form 1018.

(e) The contracting officer shall insert the clause at 1852.245-74, Contractor Accountable On-Site Government Property, in solicitations and contracts when accountability rests with an on-site contractor. The contracting officer shall obtain approval to use the clause at 1852.245-74 in lieu of the clause at 1852.245-71 from Director, Supply and Equipment Management Division (Code NIE), NASA Headquarters. The request for approval shall be written and shall include a determination of costs that will be:

(i) Avoided (e.g., additional costs to the installation's property management systems and staffing) and

(ii) Incurred (e.g., reimbursable costs of the contractor to implement, staff, and operate separate property management systems on-site, and resources needed for performance of, or reimbursement for, property administration) under contractor accountability.

(f) The contracting officer shall insert the clause at 1852.245-75, Title to Equipment, in solicitations and contracts where the clause at FAR 52.245-2 (Alternate II) or 52.245-5 (Alternate I) is used. Insert a dollar value not less than $5,000, based on the particular procurement, and identify the property for which vesting of title with the Government is appropriate.

(g) The contracting officer shall insert the clause at 1852.245-76, List of Government-Furnished Property, in solicitations and contracts if the contractor is to be accountable under the contract for Government property. Insert the name of the Government installation, contractor's plant, or other site(s) where the Government property will be used. Insert a description of the item(s), quantity, acquisition cost, and date the property will be furnished to the contractor.

(h) The contracting officer shall insert the clause at 1852.245-77, List of Installation-Provided Property and Services, in solicitations and contracts that authorize contractor use of on-site Government property and services, such as office space, the cafeteria, or first-aid. Insert the attachment number identifying the equipment to be made available to the contractor. Insert the name of the installation service facilities, such as a library, computer facility, or health center, that the contractor will be authorized to use. The property and services may be specified, modified, and updated to meet the needs of the particular procurement.

(i) The contracting officer shall insert the clause at 1852.245-78, Space Hardware Reporting, in solicitations and contracts where space hardware reporting is contemplated. Insert the space hardware to be reported.

(j) The contracting officer shall insert the provision at 1852.245-79, Use of Government-Owned Property, in all solicitations when Government property may be used by the contractor.

(k) The contracting officer shall insert the clause at 1852.245-80, Use of Government Production and Research Property on a No-Charge Basis, in solicitations and contracts when Government production and research property (facilities, special test equipment, or special tooling) accountable under another contract(s) is authorized for use. Insert the contract number(s) under which the Government property is accountable.

1845.106-71 Plant reconversion and plant clearance.

The contracting officer must obtain the prior approval of the Assistant Administrator for Procurement (Code H) for any solicitation provision or contract clause that would defer negotiation of costs for plant reconversion or plant clearance until after award.

Subpart 1845.3—Providing Government Property to Contractors

1845.301 Definitions.

Provide, as used in this subpart in such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to permit to be acquired, as in "contractor-acquired property." See FAR 45.101 for definitions of *contractor-acquired property* and *Government-furnished property*.

Space property, (see 1845.501).

1845.302 Providing facilities.

1845.302-1 Policy.

(a) The Directors of NASA field installations have been designated (see NASA Management Instruction (NMI) 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials)) to make determinations required by FAR 45.302-1(a)(4) on providing Government facilities.

(b) When any of the conditions listed in FAR 45.302-1(d) is met, the requirements of FAR 45.302-1(a)(4) do not apply.

1845.302-2 Facilities contracts.

Unless termination would be detrimental to the Government's interests, contracting officers shall terminate facilities contracts when the Government production and research property is no longer required for the performance of Government contracts or subcontracts. Contracting officers shall not grant the contractor the unilateral right to extend the time during which it is entitled to use the property provided under the facilities contract.

1845.302-3 Other contracts.

In addition to the conditions listed in FAR 45.302-3, the contracting officer may also provide facilities to a contractor under a contract other than a facilities contract if the contract is for less than 6 months or provides fewer than 6 items of plant equipment and no other facilities.

1845.302-70 Securing approval of facilities projects.

(a) Pursuant to NMI 7330.1, the contracting officer must approve facilities projects involving leasing, construction, expansion, modification, rehabilitation, repair, or replacement of real property.

(b) The contracting officer's written authorization is required before any change is made in the scope or estimated cost of any facilities project.

1845.302-71 Acquisition of ADPE.

Any contractor proposed acquisition of automatic data processing equipment as defined in the FIRMR shall be—

(a) Submitted on DD Form 1419, or equivalent format, through the contracting officer to the installation's ADPE staff, for screening availability; and

(b) Approved in accordance with the provisions of NASA Handbook 2410.1, "Information Processing Resources Management."

1845.302-72 Long-term facilities use.

For procurements in which:

(a) The proposed contract, exclusive of options, will be for a shorter period than the useful life, for the program, of any required contractor-owned or leased facilities, and

(b) The facilities are unlikely to be needed by the contractor for any purpose other than the program effort being contracted for, see 1807.170-1(i).

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.402 Authorizing use of Government production and research property.

(a) A NASA contracting officer desiring to authorize use of Government production and research property under the cognizance of another contracting officer shall obtain that contracting officer's concurrence. If concurrence is denied, the contracting officer shall raise the matter to a level above that of the cognizant contracting officer.

(b) NASA contracting officers having cognizance over NASA production and research property may authorize its use on contracts of other agencies if such use will not interfere with NASA's primary purpose for the property and will not extend beyond the expected expiration or completion date of the NASA contract.

1845.403 Rental—Use and charges clause.

The Directors of NASA field installations have been designated (see NMI 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials)) to make the determinations required by FAR 45.403(a) on modified rental rates.

1845.405 Contracts with foreign governments or international organizations.

(a) It is NASA's policy to recover a fair share of the cost of Government production and research property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

(b) The prior written approval of the Assistant Administrator for Procurement (Code H) is required for the use of Government production and research property on work for foreign countries or for international organizations. Before requesting approval, the contracting officer shall obtain the concurrence of the Director, Supply and Equipment Management Division (Code NIE), the General Counsel (Code G), and the Director, International Relations Division (Code XI).

(c) Contracting officers shall forward requests for approval to the Assistant Administrator for Procurement (Code H), along with a summary of the circumstances involved, including at least—

(1) The name of the requesting contractor;

(2) The number of the contract under which the equipment is controlled;

(3) A description of the equipment;

(4) The name of the foreign contractor and the relationship of the foreign contractor to its government or to any international organization;

(5) A description of the articles to be manufactured or services to be performed;

(6) A statement that the intended use will not interfere with the current or foreseeable requirements of the United States or require use of the equipment beyond the expected expiration or completion date of the NASA contract;

(7) A statement that the foreign government's placement of the contract directly with the contractor and the use of Government production and research property is consistent with the best interests of the United States;

(8) A statement that such use is legally authorized; and

(9) Any evidence of endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States.

(d) Use, if approved, shall be subject to rent in accordance with FAR 45.403.

1845.406 Use of Government production and research property on independent research and development programs.

Contractors generally will not be authorized to use Government property for independent research and development on a rent-free basis except in unusual circumstances when it has been determined by the contracting officer that—

(a) Such use is clearly in the best interests of the Government (for example, the project can reasonably be expected to be of value in specific Government programs); and

(b) The policy in FAR 45.201 is adhered to in that no competitive advantage will accrue to the contractor through such use.

1845.407 Non-Government use of plant equipment.

Consistent with the guidelines in FAR 45.407, the following procedures apply to the non-Government use of plant equipment:

(a) Before authorizing non-Government use exceeding 25 percent, the contracting officer shall obtain the approval of the Assistant Administrator for Procurement (Code H). In addition, non-Government use of machine tools and secondary metal-forming and -cutting machines (Federal Supply Classes 3405, 3408, 3410, 3411-3419, and 3441-3449) exceeding 25 percent requires the concurrence of the Director, Supply and Equipment Management Division (Code NIE). Requests for the approval of the Assistant Administrator for Procurement (Code H) shall be submitted at least 6 weeks in advance of the projected use and shall include—

(1) The number of active plant equipment items involved and their total acquisition cost; and

(2) An itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each item the nomenclature, year of manufacture, and acquisition cost.

(b) The percentage of Government and non-Government use shall be computed on the basis of time available for use. For this purpose, the contractor's normal work schedule, as represented by scheduled production shift hours, shall be used. All active plant equipment having a unit acquisition cost of less than $25,000 located at any single plant may be averaged over a quarterly period. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis.

(c) Approval for non-Government use shall be for a period not exceeding 1 year. Approval for non-Government use in excess of 25 percent shall not be for less than 3 months.

Subpart 1845.5—Management of Government Property in the Possession of Contractors

1845.501 Definitions.

Centrally reportable equipment (CRE) means plant equipment, special test equipment (including components), special tooling, and non-flight space property (including ground support equipment):

(a) Generally commercially available and used as a separate item or component of a system,

(b) Having an acquisition cost of $1,000 or more, and

(c) Identifiable by a manufacturer and model number.

Space property means personal property peculiar to NASA aeronautical and space programs and not otherwise included in the categories of property in FAR 45.501. It includes such items as aircraft, space vehicles, engines, similar components, and related support equipment. The term "space property" is synonymous with the term "agency-peculiar property" as defined in FAR 45.301.

1845.502 Contractor responsibility.

1845.502-1 Receipts for Government property.

Receipts for Government property shall comply with the instructions for preparing NASA Form 1018, Report of Government-Owned/Contractor-Held Property (see 1845.7101).

1845.502-70 Government-furnished property.

All initial Government-furnished property must be described in the contract Schedule or specifications, regardless of property category. Any additional Government-furnished property must be described in a bilateral modification to the contract, with the property categorized and priced. Furthermore, to obtain Government-furnished facilities, the contractor must submit the written statement prescribed by FAR 45.302-1(a)(4). In the event a formal facilities application is also required by the contracting officer, its justification statement on financing will satisfy this requirement.

1845.502-71 Contractor-acquired property.

All contractor-acquired property must be authorized by the contract and is subject to a determination by the contracting officer that it is allocable to the contract and reasonably necessary. The acquisition (and fabrication) of Government property is further subject to the following conditions, depending on category of property:

(a) *Facilities.* (1) Prior contracting officer approval, if the facilities are not already described in a contract Schedule as contractor-acquired.

(2) Submission of DD Form 1419, DOD Industrial Plant Requisition, or equivalent format, and return of Certificate of Nonavailability if the facilities qualify as centrally reportable equipment (CRE).

(3) Submission of the written statement prescribed by FAR 45.302-1(a)(4).

(b) *Special test equipment.* (1) Contracting officer approval 30 days in advance if the equipment is not identified in the invitation for bids (in sealed bidding) or contract (in negotiated procurements).

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability if the equipment (or any component) qualifies as CRE.

(c) *Special tooling.* (1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) If the contract is a fixed-price contract, submission of the list to the contracting officer within 60 days after delivery of the first production end items (or later as prescribed by the contracting officer), unless the tooling is already identified in the solicitation.

(3) Submission of DD Form 1419 or equivalent format and return of Certificate of Nonavailability if the tooling (or any component) qualifies as CRE.

(d) *Material.* If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(e) *Space Property.* (1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability if the property (or any component) qualifies as CRE.

1845.505 Records and reports of Government property.

1845.505-2 Records of pricing information.

If DD Form 250's are used by a NASA installation as invoices or DD 250's or other shipping/delivery documents are used for property receiving purposes, unit prices must be shown for each item of Government property included on the forms.

1845.505-14 Reports of Government property.

(a) *Property accounts.* The contractor's property control system shall be such as to provide the dollar amount of Government property for which the contractor is accountable in the following classifications, in accordance with the instructions in subpart 1845.71:

(1) Land and rights in land.
(2) Buildings.
(3) Other structures and facilities.
(4) Leasehold improvements.
(5) Plant equipment.
(6) Special tooling.
(7) Special test equipment.
(8) Material.
(9) Space hardware.

(b) *Facilities, special tooling, and special test equipment.* The contractor's property control system shall identify the items in paragraphs (a)(1) through (7) of this section as contractor-acquired or Government-furnished.

(c) *Material and space hardware.* The contractor's property control system shall provide the dollar value of items in paragraphs (a) (8) and (9) of this section for which the contractor is accountable. Reporting of material, however, is required only when the balance on hand at the end of the reporting period is $75,000 or more. Reporting of space hardware is required only by direction of the contracting officer.

(d) *Submission of reports.* When required by the contract (see 1845.106-70(d)), the contractor shall submit a Report of Government-Owned/Contractor-Held Property, NASA Form 1018, in accordance with the instructions in subpart 1845.7101 and the contract clause at 1852.245-73.

1845.505-670 Reporting centrally reportable equipment (CRE).

(a) NASA-furnished or contractor-acquired CRE as defined in 1845.501 shall be reported to the NASA Equipment Management System (NEMS). The contractor shall initially report all unreported items in its possession and subsequently shall report items to NEMS:

(1) At the time of receipt and acceptance of accountability,

(2) When major changes occur in the data initially submitted to NASA, and

(3) When the equipment is no longer required for or actively being used in pursuit of NASA programs or projects.

Reporting shall be accomplished by completing section I of DD Form 1342, DOD Property Record (see 1845.7102), or by other means acceptable to the contracting officer, provided DD Form 1342-equivalent data elements are furnished. The data furnished when the equipment is reported pursuant to paragraph (a)(3) of this section shall include the equipment's current condition code. Reportable data shall be forwarded through the contracting officer of the cognizant NASA installation within 15 working days after the event that created the need for their preparation and shall be marked "FOR NEMS".

(b) The forms prepared for components shall be clearly marked "COMPONENT".

(c) Each year, the industrial property officer shall provide the contractor a list of NEMS data bank records as of June 30th for that contractor. The contractor shall verify the list or provide the necessary corrections.

1845.508 Physical inventories.

NASA contractors shall reconcile inventories described in FAR 45.508 with the official property records and submit reports to the property administrator within 30 days after inventory completion. The contractor shall investigate all losses of property and discoveries of unrecorded property to determine the:

(a) Causes of the discrepancy and

(b) Actions needed to prevent its recurrence.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.

(a) No contractor may sell contractor inventory to persons known by it to be NASA or DOD personnel who have been engaged in administering or terminating NASA contracts.

(b)(1) The contractor's or subcontractor's authority to approve sale, purchase, or retention at less than cost by a subcontractor, and the subcontractor's authority to sell, purchase, or retain at less than cost contractor inventory with the approval of the contractor or next higher-tier subcontractor does not include authority to approve—

(i) A sale by a subcontractor to contractor or the next higher-tier subcontractor or to an affiliate of the contractor or of either subcontractor; or

(ii) A sale, purchase, or retention at less than cost by a subcontractor affiliated with the contractor or next higher-tier subcontractor.

(2) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

1845.606 Inventory schedules.

1845.606-1 Submission.

See 1845.505-6 for special instructions on intra-agency screening of centrally reportable equipment (CRE).

1845.607 Scrap.

1845.607-70 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this subpart.

(b) A plant clearance case shall not be established for property disposed of through the contractor's approved scrap procedure.

(c) The plant clearance officer shall review the contractor's scrap and salvage procedure, particularly regarding sales, before its approval by the property administrator. The plant clearance officer shall ensure that the procedure contains adequate requirements for inspecting and examining items to be disposed as scrap. When the contractor's procedure does not require physical segregation of Government-owned scrap from contractor-owned scrap and separate disposal, care shall be exercised to assure that a contract change that generates a large quantity of property does not result in an inequitable return to the Government. In such a case, the property administrator shall make a determination as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR part 45 and this NASA FAR Supplement.

(e) Silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium; scrap bearing such metals; and items containing recoverable quantities of them shall be reported to the Defense Reutilization and Marketing Service, DRMS-R, Federal Center, Battle Creek, MI 49017-3092, for instructions regarding disposition.

1845.608 Screening of contractor inventory.

1845.608-1 General.

NEMS Coordinators are the focal points at NASA installations for intra-agency screening of centrally reportable equipment (see 1845.505-670). Property Disposal Officers (PDO's) are the focal points at NASA installations for intra-agency screening of all other contractor inventory. NEMS Coordinators/PDO's shall acknowledge receipt of inventory schedules within 30 days and simultaneously provide the plant clearance officer a NASA screening completion/release date. Screening shall be accomplished in accordance with NASA Handbooks 4200.1 and 4300.1.

1845.608-6 Waiver of screening requirements.

The Director, Supply and Equipment Management Division (Code NIE), has been designated to authorize exceptions to screening requirements.

1845.610 Sale of surplus contractor inventory.

1845.610-2 Exemptions from sale by GSA.

Letters seeking exemptions from GSA-conducted sales shall be directed to the Director, Supply and Equipment Management Division (Code NIE).

1845.610-3 Proceeds of sale.

When payments are due the contractor under the contract, and unless the contract provides otherwise, the Government Property clause requires that the proceeds of any sale, purchase, or retention be:

(a) Credited to the Government as part of the settlement agreement,

(b) Otherwise credited to the price or cost of the work covered by the contract, or

(c) Applied in the manner directed by the contracting officer.

The plant clearance officer shall maintain an open suspense record until he or she has verified that credit has been applied, unless another Government representative has specifically assumed this responsibility.

1845.610-4 Contractor inventory in foreign countries.

Foreign disposals shall be accomplished in accordance with NASA Handbook 4300.1.

1845.613 Property disposal determinations.

Determinations to abandon or destroy NASA contractor inventory shall be referred to the installation PDO for subsequent review by the Property Disposal Review Board under NASA Handbook 4300.1.

1845.615 Accounting for contractor inventory.

In addition to the distribution requirements for Standard Form 1424, Inventory Disposal Report, a copy of the form shall be provided to the NASA installation Industrial Property Officer or PDO.

Subpart 1845.70—NASA Equipment Management System

1845.7001 Policy.

In accordance with the policies in FAR part 8, new equipment shall not be designed, developed, or procured unless it is determined that the requirement cannot be satisfied with items already available. Accordingly, before acquisition by an installation or the issuance of an authorization to a contractor to acquire new centrally reportable equipment (see 1845.501), the NASA Equipment Management System (NEMS) shall be screened and a certificate of non-availability issued by the cognizant installation NEMS Reutilization Coordinator, attesting to the non-availability of existing Government-owned equipment to satisfy the requirement.

1845.7002 Application.

The NEMS requirements apply to all NASA acquisitions under which equipment reportable to NEMS is acquired either by NASA or by a NASA contractor for use in the performance of NASA work.

1845.7003 General.

NEMS is an agencywide accountability and control system that includes basic information for reutilization of equipment valued at $500 or more held by NASA installations or $1,000 or more held by NASA contractors. General-purpose or standard items of commercial manufacture are registered in NEMS.

1845.7004 Interface with NEMS coordinators and technical project office.

NASA contracting officers with contracts subject to NEMS shall maintain close interface with the installation NEMS Reutilization Coordinator and the technical project office in:

(a) The conduct of contractor reporting to the NEMS,

(b) The screening of NEMS records before authorizing contractors to acquire equipment,

(c) The reporting and processing of equipment no longer required for NASA programs or projects, and

(d) All other matters pertaining to compliance with the property provisions of NASA contracts.

1845.7005 Retention of NEMS equipment.

The contracting officer may authorize retention of NEMS equipment, provided the contractor requests approval in writing concurrently with reporting to NEMS under the provisions of 1845.505-670 and provided the equipment is being:

(a) Held for approved future NASA programs and projects identified to a specific requirement; or

(b) Used on other Government work as approved by the contracting officer.

Approval for the use of equipment on other Government work shall not exceed 6 months beyond its use on NASA work unless loan of the equipment under an interagency agreement has been arranged or action has been initiated for transfer of the equipment to the using agency and appropriate time is allowed for completing the transfer.

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.

This section provides guidance in the preparation of NASA Form 1018 (see subpart 1853.3), which is required of all contractors that have been furnished, or have acquired, Government-owned property under the terms of their contract. The classifications of property, the related costs to be reported, and the reporting requirements are set forth below:

1845.7101-1 Property classification accounts.

The following property classifications and related costs apply only to financial reporting under NASA Form 1018:

(a) *Land.* This classification includes costs of land, capital improvements to land (except buildings and other structures and facilities), and costs incidental to acquiring and preparing land for use, such as appraisal fees, clearing costs, drainage, grading, landscaping, plats and surveys, removal and relocation of the property of others as part of a purchase contract, removal or destruction of structures or facilities purchased but not used, and legal fees and expenses.

(b) *Buildings.* This classification includes costs of buildings, improvements to buildings, and fixed equipment normally required for the functional use of the building that becomes permanently attached to and made a part of it and cannot be removed without cutting into the walls, ceilings, or floors. Fixed equipment includes plumbing, heating and lighting equipment, elevators, central air-conditioning systems, and built-in safes and vaults. It also includes the cost of all equipment of any type built into, affixed to, or installed in real property if the installation cost, including special foundations or unique utilities or services, or the facility restoration cost after removal, is substantial.

(c) *Other structures and facilities.* This classification includes costs of acquisitions and improvements of other structures and facilities such as airfield pavements; harbor and port facilities; power production facilities and distribution systems; reclamation and irrigation facilities; flood control and navigation aids; storage, industrial, service, and research and development facilities other than buildings; utility systems (heating, sewage, water, and electrical) when they serve several buildings or structures; communication systems; traffic aids; roads and bridges; railroads; monuments and memorials; and nonstructural improvements such as sidewalks, parking areas, and fences. It also includes the cost of all equipment of any type built-in, affixed, or installed where the installation cost, including special foundations or unique utilities or services, or the facility restoration cost after removal, is substantial.

(d) *Leasehold improvements.* This classification includes NASA funded costs of long-term capital improvements (more than 3 years) to leases, rights, interests, and privileges relating to land such as easements, rights-of-way, permits, use agreements, and water, air, and mineral rights. It also includes NASA funded costs of improvements (costing $5,000 or more and determined to be a capital asset) made to land, buildings, and other structures and facilities occupied by a NASA contractor but leased either indirectly through contract or directly by NASA rather than owned by NASA. However, the cost of NASA-owned buildings and other structures and facilities (and improvements to them that meet the criteria for capitalization) occupied by a NASA contractor and located on land not owned by NASA shall be included in the appropriate account(s) described in paragraphs (a), (b), and (c) of this section. A single improvement shall not be accomplished in increments of less than $5,000 in order to avoid adjustment to the fixed asset accounts.

(e) *Plant equipment.* This classification includes costs of personal property of a capital nature for use in manufacturing supplies, performing services, or for any administrative or general plan purpose, which—

(1) Has a unit cost of $5,000 or more;

(2) Has a useful life of 2 years or more; and

(3) Will not be consumed in an experiment.

It includes equipment, machine tools, furniture, vehicles, accessory or auxiliary items, and test equipment (but not special test equipment, special tooling, or space hardware as defined in paragraphs (f), (g), and (i) of this section.)

(f) *Special tooling.* This classification includes the cost of jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, that are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include the cost of material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

(g) *Special test equipment.* This classification includes costs of either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract; items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include costs of material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

(h) *Material.* This classification includes costs of property that may be:

(1) Incorporated into or attached to an end item to be delivered under a contract or

(2) Consumed or expended in performing a contract.

It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies that may be consumed in normal use in performing a contract. This classification does not include material that is part of space hardware work in process reported on NASA Form 1018, Schedule II, when required by the terms of the agreement, or material that has been issued from inventory and charged to a contract item. It is intended to include all Government-owned material that normally would be considered as materials inventory for balance-sheet purposes.

(i) *Space hardware.* This classification applies only to those items of space property and components specifically identified in the Annual List of Selected Items of Space Hardware (see 1845.7101-6). It includes the cost of personal property unique to NASA aeronautical and space programs and not otherwise included in the classifications of property set forth in paragraphs (a) through (h) of this section. Space hardware is divided as follows for financial reporting purposes:

(1) Completed space hardware, systems, and subsystems (includes the cost, actual or estimated, of such items as aircraft, engines, space vehicles, satellites, spacecraft, and rockets, including components provided for prototypes, mock-ups, or fit checks, or for such other reasons as may be specified in the contract).

(2) Spare parts and components (includes the cost, actual or estimated, of deliverable spare parts and components employed as spare parts to be used for the purpose of emergency replacement, repair, or modification after the fabrication of space hardware). These types of property are commonly referred to as "logistics spares" or "test support spares" and do not include components utilized by the contractor that are not deliverable as spares and that are included as work in process.

(3) Space hardware work in process (includes the actual or estimated fabrication costs as of the date of the report of undelivered space hardware and associated systems, subsystems, spare parts, and components provided or acquired and charged to work in process pending incorporation into an end item). Such items are included in what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are progress payments to firm-fixed-price subcontractors for undelivered items.

1845.7101-2 Transfers of property.

So that NASA may properly control and account for contractor-held Government property (both Government-furnished and contractor-acquired), all transfers to another contract, contractor, NASA installation, or other Government agency shall be adequately documented. Such transfers shall be accomplished only through the NASA installation responsible for the contract from which the property is being transferred.

(a) *Transfers by contractors*—(1) *Approval and notification.* The contractor must obtain the contracting officer's or designee's approval for transfers of property before shipment. Shipping documents shall specify the appropriate property classification, such as plant equipment, special test equipment, special tooling, or space hardware. Shipping contractors shall notify the cognizant property administrator of transfers of property by furnishing a copy of the shipping document. Shipping and receiving contractors shall promptly notify their respective NASA financial management offices when accountability for Government property reportable on NASA Form 1018 is transferred to, or received from, other contracts, contractors, NASA installations, or Government agencies. Copies of shipping/receiving documents will suffice in most instances.

(2) *Documentation.* The shipping contractor shall prepare an acceptable form of documentation such as DD Form 250, Material Inspection and Receiving Report; DD Form 1149, Requisition and Invoice/Shipping Document; or similar forms to cover movement of Government property to other Government agencies. Established procedures for the use of such forms shall be strictly followed. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded, unit prices, and any other appropriate identifying or descriptive data. Unit prices shall be obtained from records maintained pursuant to the provisions of FAR part 45 and part 1845 of this regulation.

(3) *Reporting.* In addition to the required shipping documentation, all transfers of reportable property occurring during the reporting period shall be reflected in column (b), Government-Furnished Additions, of NASA Form 1018 by the receiving contractor and in column (e), Disposals, of NASA Form 1018 by the shipping contractor.

(4) *Reclassification.* Reclassifications between property accounts shall be accomplished by the contractor holding the property at the time reclassification takes place. If property is transferred to another contract or contractor, the receiving contractor shall record it in the same property classification and amount appearing on the shipping document. (For example, when a contractor receives an item, by transfer from another contractor or NASA installation, that is identified on the shipping document as plant equipment but that the recipient intends to incorporate into special test equipment, the recipient shall first enter the item in the plant equipment account and subsequently reclassify it as special test equipment.) The reclassification of plant equipment, special tooling, special test equipment, or space hardware requires prior notification to the property administrator and approval of the contracting officer.

(5) *Incomplete documentation.* If contractors receive transfer documents having insufficient detail to properly record the transfer (e.g., omission of property classification, unit prices, etc.), they shall request the omitted data directly from the shipping contractor or through the property administrator as provided in FAR 45.505-2. Contractors may append a Government-furnished property list to the NASA Form 1018 report when unable to obtain the required data, provided that the list includes—

(i) A description of the property;

(ii) Quantity;

(iii) The shipping document reference;

(iv) The shipper's identity;

(v) The dates shipped or received;

(vi) The dates price data were requested and from whom (shipper or property administrator); and

(vii) The NASA Form 1018 line item (type/account) to be adjusted.

(b) *Other transfers*—(1) *Intracontractor transfers.* Any transfer of Government property between contracts of a single contractor, whether administered by the same NASA installation or by different NASA installations, requires the same approval, notification, and documentation set forth in paragraph (a) of this section.

(2) Transfer to Government agencies other than NASA. Transfers of Government property to other Government agencies can be accomplished only through the NASA contracting officer and require the same approval, notification, and documentation set forth in paragraph (a) of this section.

(3) Recovered space hardware. Space hardware recovered after flight and transferred to a contractor for analysis, repair, refurbishment, or other purposes shall not be reported on subsequent NASA Forms 1018 as space hardware unless accountability has been transferred and the contractor is specifically directed to report the item.

1845.7101-3 Submission of reports.

(a) When the contract includes the Financial Reporting of Government-Owned/Contractor-Held Property clause, the contractor shall prepare a Report of Government-Owned/Contractor-Held Property, NASA Form 1018, in accordance with these instructions and those on the NASA Form 1018.

(b) The contractor shall submit four copies of NASA Form 1018 for the period ending June 30 in accordance with the clause not later than July 31 of each year, when reporting is required annually. When more frequent reporting is required, the due date shall be not later than the last day of the month following the period being reported. The reporting requirement shall not be less frequent than annually; in all cases a report shall be required as of June 30.

(c) Negative reports shall be submitted when appropriate.

(d) The contractor shall submit a final report within 30 days after disposition of all property subject to reporting.

1845.7101-4 Report coverage.

(a) The NASA Form 1018 shall include the cost of all Government-owned property, except as noted in 1845.7101-5, in the possession of the contractor and first-tier subcontractors under each prime contract, using the prime contractor's records to the extent practicable when the subcontractor reporting is delayed.

(b) Government-owned material held in storage by the contractor and subcontractor shall be reported only when the balance on hand at the end of the reporting period is $75,000 or more for each government prime contract, including the amounts under subcontracts.

(c) Space hardware shall be reported only if reporting is specifically requested in writing by the contracting officer, and reporting shall be limited to those items identified on the Annual List of Selected Items of Space Hardware (see section 6).

1845.7101-5 Exclusions.

The following items shall not be reported on NASA Form 1018:

(a) Plant equipment having a unit cost of less than $5,000.

(b) Industrial facilities under construction or material held for use in construction of industrial facilities.

(c) Scrap or salvage.

(d) Items ordinarily reportable but furnished to the contractor for repair and return to NASA (except as required in 1845.7101-2(b)(3)).

(e) Work in process except as required in Schedule II, Space Hardware Reportable Items, of NASA Form 1018.

(f) Materials issued for consumption.

(g) Materials held in storage, if the cost at the close of the reporting period is less than $75,000.

(h) NASA shipping containers.

(i) Space hardware under firm-fixed-price contracts and subcontracts, unless progress payments are specified (see 1845.7101-1(i)(3)).

(j) Space property, except those items specifically identified as space hardware and required to be reported in accordance with 1845.7101-6 below.

(k) Installation property made available pursuant to the clause at 1852.245-71.

1845.7101-6 Space hardware reporting requirements.

(a) The contracting officer may require reporting on space hardware for cost reimbursement and incentive contracts and first-tier subcontracts if the estimated cost and fee of the contract exceeds $500,000 and any one or a combination of the individual reporting categories (i.e., completed space hardware, components and spare parts, and work in process) exceeds $75,000.

(b) The contracting officer shall specify the items of space hardware for reporting before June 1 of each year on the basis of the Annual List of Selected Items of Space Hardware, issued by the Director of Financial Management, NASA Headquarters (Code BF).

(c) Reporting shall become effective with the next report period beginning July 1, or as otherwise stipulated in the contract, and shall continue until all specified items of space hardware are delivered, the contract is terminated, or the item is removed from the List.

(d) The reports shall contain—

(1) The reportable items on hand, consisting of the cost and quantity of completed space hardware and the cost of related independent completed systems and subsystems;

(2) The total amount for completed spare parts and components relating to paragraph (d)(1) of this section; and

(3) The total amount for work in process of fabrication relating to the preceding items.

(e) Costs reported on Schedule II shall not be considered in reimbursing the contractor for work performed or for termination proceedings. Costs shall be computed in accordance with accepted accounting principles, be reasonably accurate, and be the product of any one, or a combination, of the following:

(1) Abstracts of cost data from the contractor's property or financial records.

(2) Computations based on engineering and financial data.

(3) Estimates based on NASA Form 533 reports.

(4) Formula procedures (e.g., using a 50-percent factor for work-in-process items, on the basis of updated Standard Form (SF) 1411 estimates or the contractor's approved estimating and pricing system).

(5) Other approved methods.

(f) If the same item is being fabricated for more than one project, contractors shall report by contract item the completed space hardware, related independent systems and subsystems, spare parts, and work in process.

(g) When a contract provides for two or more different and completed space property items, some of which are not included in the List, contractors shall report the actual cost of those items, if possible, or use a reasonable basis permitted by the contractor's records or a basis provided in paragraph (e) of this section.

(h) Contractors shall report the cost of items of space hardware, systems, and subsystems using their records that are part of the prescribed property or financial control system as provided in 1845.7101-3; however, fee, tooling, and other nonrecurring costs shall be excluded. Fabrication costs shall be based on the contractor's approved estimating and pricing or property control system and should include—

(1) Direct labor;

(2) Direct materials and purchased parts (costs of purchased items shall be consistent with the contractor's approved pricing methods);

(3) Other direct costs (e.g., computer costs, travel, and transportation);

(4) Overhead (a percentage factor or rate applied to the direct costs or other applicable base); and

(5) Costs of Government-furnished property applied (data available from the shipping document—e.g., DD Form 250, 1149, or similar form—or estimated if necessary).

1845.7101-7 Completed space hardware.

(a) Completed space hardware includes configurations of spacecraft, satellites, rockets, etc. (including integrated systems and subsystems) and completed, but not yet integrated, systems and subsystems held by the prime contractor and first-tier subcontractors.

(b) Items of space hardware covered in paragraph (a) of this section that are completed and deliverable shall not be broken down into systems and subsystems for the purpose of reporting.

(c) The contractor shall redetermine the cost of items returned for modification or rehabilitation to include the appropriate amount of original costs plus any improvements. Costs to modify single shelf items to perform specific tests shall not be included. Contractors shall discontinue reporting space hardware that has been launched, delivered to another contractor or to the Government, or disposed of as authorized by the contracting officer.

1845.7101-8 Completed spare parts and components for space hardware.

(a) In reporting completed spare parts and component items for space hardware, contractors shall include as a single amount for each contract item (as provided in 1845.7101-6(d)) the aggregate cost of those spares and components (see 1845.7101-1(i)(2)) related to the selected list of completed items.

(b) Standard items available from commercial or other sources and held on an inventory basis until requisitioned for use are excluded here but shall be included in "Material" on NASA Form 1018. Contractors shall not include spares or components reported in Schedule II, Space Hardware Reportable Items, of NASA Form 1018 in "Material" on page 1, NASA Form 1018.

1845.7101-9 Space hardware work in process.

(a) Space hardware work in process consists of the total costs by contract item as provided in 1845.7101-6(d). The contractor shall compute the costs—as of the date of the report of those unfinished space hardware units pertaining to the selected list of completed items to be reported—as provided in 1845.7101-6(e). This computation shall include the costs of associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items comprise what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are end items on which the prime contractor or a subcontractor has begun work.

(b) Unless accountability has been transferred to the contractor, the contractor normally shall not include space hardware spare parts and components returned for repair or modification in the in-process inventory (or spare parts and components inventory). Units or lots that are incomplete for any reason, such as obsolescence or faulty fabrication, or by direction of the contracting officer, shall not be reported in NASA Form 1018, Schedule II.

(c) Historical costs on NASA Form 533, Contractor Financial Management Reports, may be used (see 1845.7101-6(e)) if they apply to the selected items to be reported and are consistent with the costing of completed items. When costs are taken from the NASA Form 533, the cost of Government-furnished property shall be added (where applicable) or listed as provided in 1845.7101-2(a)(5). The costs shall then be adjusted for completed items and spare parts, etc., inventoried elsewhere or shipped to and accepted by a third party.

1845.7101-10 Contractor's privileged financial and business information.

If a transfer of property between contractors will involve disclosing costs of a proprietary nature, the contractor shall furnish unit prices only on those copies of the shipping documents that are sent to the shipping and receiving NASA installations. Transfer of the property to the receiving contractor shall be on a no-cost basis.

1845.7102 Instructions for preparing DD Form 1342.

The instructions in this section shall be used in the preparation of DD Form 1342, DOD Property Record, to report newly acquired equipment, items not previously reported, major changes in the data initially submitted, or equipment no longer required for or actively being used in the pursuit of NASA programs or projects. Use of DD Form 1342 is not mandatory if the same information is provided in an alternative format. Only one initial report is required. In-use items shall be reported initially to the NASA Equipment Management System (NEMS) through the contracting officer (see 1845.505-670) by use of this form by checking "Active" and "Initial" in Block 1. Identify idle items being initially reported by checking "Idle" and "Initial" in Block 1.

Block 1. Check appropriate boxes to indicate "Active" or "Idle" report and that the report is an "Initial" or "Changed" report.

Block 2. Enter the Julian date of preparation of the form. The first character is the last digit of the current calendar year, and the next three characters are the Julian date of the year.

Block 3. Enter the Identification Number/Government Tag Number as recorded on the identification plate affixed to the equipment.

SECTION I—INVENTORY RECORD

Block 4. Not applicable.

Block 5. Enter the first four digits of the National Stock Number, if known.

Block 6. Indicate in dollars (omit any symbols, decimal points, commas, etc.) the acquisition cost used for property accounting purposes. This acquisition cost is the price of the basic item plus any accessories and auxiliary equipment procured and delivered with it. If the initial acquisition cost data are not available, use an estimated acquisition cost (based on known costs at the time of manufacture of the same or similar equipment), price lists for the period involved, or the best available price from other sources in NASA or DOD that will achieve conformity of prices for like items of equipment.

Block 7. Not applicable.

Block 8. Enter the last two digits of the year the item was manufactured. If the actual year of manufacture cannot be determined, estimate the date and place an "E" immediately preceding the entry.

Blocks 9 through 13. Not applicable.

Block 14. Enter the name of the manufacturer of the equipment being reported. Do not use a distributor's or vendor's name. Enter "Unknown" when the manufacturer is not known.

Block 15. This is a five-digit numerical code identifying the manufacturer, obtained from Cataloging Handbook H4-1.

Block 16.

a. Enter the manufacturer's model, style, or catalog number for the equipment being reported. Always use the model number, if available. Style number is next in preference. When the manufacturer does not assign a model, style, or catalog number, enter "None".

b. When unable to locate a model number, refer to the manufacturer's brochure or purchase order. If the model number is obtained from other than the equipment, indicate the source in "Remarks," Block 54.

Block 17. Enter the serial number taken from the equipment. If a serial number is not assigned to the item, enter "None".

Blocks 18 through 21. Not applicable.

Block 22. Enter Certificate of Nonavailability number from Block 41, DD Form 1419 or other screening document.

Block 23. Not applicable.

Block 24. Not applicable.

Block 25. Enter the complete contract number under which the contractor is accountable for the item. This normally will be a facility contract number. Otherwise, enter the procurement contract number.

Block 26. Enter the complete description of the item.

Block 27. Not applicable.

Block 28. Enter the NASA installation or company name, street address, city, state, and zip code of the physical location of the equipment. If the physical location is a subcontractor's plant, enter the name of the prime contractor above the subcontractor's name. Do not use the office address if different from the plant address. If no street address exists, enter "No street address".

Blocks 28a and 29. Not applicable.

SECTION II—INSPECTION RECORD

Not applicable, except for Block 52, which should be completed when reporting (in accordance with 1845.505-670) that an item is no longer required for or actively being used in pursuit of NASA programs or projects.

SECTION III—REMARKS. NOT APPLICABLE

SECTION IV—DISPOSITION RECORD. NOT APPLICABLE

SECTION V—VALIDATION RECORD. NOT APPLICABLE

1845.7103 Instructions for preparing DD Form 1419.

(a) The contractor shall enter the essential information covering Sections I and II before submission of DD Form 1419, DOD Industrial Plant Equipment Requisition, to the NEMS Coordinator. The NEMS Coordinator shall review each submission for completeness and authenticity. Incomplete or invalid requests shall be returned for correction. The original and two copies of the approved DD Form 1419, or equivalent format, may be forwarded to Defense Industrial Plant Equipment Center (DIPEC) for screening of inventories. Upon completion of the screening process, DIPEC will annotate the results of the screening in section IV or V. Certification of nonavailability when cited in section V is evidence that screening has been accomplished by NASA/DIPEC. DIPEC will return the original and one copy of the request to the NEMS Coordinator of the cognizant NASA installation indicated in section III.

(b) When a suitable item is allocated in section IV, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach NASA/DIPEC within 30 days after allocation. A copy of the DD Form 1419, or equivalent format, will serve as the clearance document to inspect the equipment at the storage site. Note acceptance or rejection of the item, without inspection or after inspection in section VI. If the item is acceptable, execute section VII. Cite the NASA appropriation symbol where applicable in section VII. In either instance, acceptance or rejection, the NEMS Coordinator shall return the original of the DD Form 1419, or equivalent format, to DIPEC when items have been offered by DIPEC.

(c) The NEMS Coordinator shall assign a requisition number to each DD Form 1419, or equivalent format request. If DIPEC will be screened, the NEMS Coordinator shall code each number assigned for automatic data processing by DIPEC. The NEMS Coordinator shall also identify the requiring installation and provide a serial number and date of submission for subsequent reference. The NEMS Coordinator shall begin the requisition number with the appropriate installation FEDSTRIP/MILSTRIP Activity Address Code.

(d) Next will be a four-digit entry comprised of the last digit of the current calendar year and the Julian date of the year. For instance, February 4, 1969, would be written as 9035. The last entry will be a four-digit number from 0001 to 9999 to sequentially number requisition forms prepared on the same date. For example, the ninth requisition prepared on February 1, 1969, would be 9032-0009, preceded by the FEDSTRIP/MILSTRIP Activity Address Code. When submitting subsequent DD Forms 1419, or equivalent format, related to the item requested, the NEMS Coordinator shall use the same requisition number and add the alpha code to the end of the requisition number to indicate a second or third action on the basic request. Alpha "A" would indicate a second request, "B" a third, etc. In this manner, all actions, correspondence, etc., relative to a given request can be identified at all levels of processing by the use of the requisition number.

(e) Detailed directions for completing the DD Form 1419 follow. When DIPEC listed equipment is not being requested, the contractor may elect to provide the required data in an equivalent format, which complies with these directions.

SECTION I

Item Description. To ensure adequate screening, the item description must be complete. For single-purpose equipment or general-purpose equipment with special features, requests must contain detailed descriptive data as to size and capacities, setting forth special operating features or particular operations required to be performed by the item.

Block 1. Not applicable.

Block 2. Enter the manufacturer's name and Federal Supply Code for manufacturer (Cataloging Handbook H4-1) of the item requested.

Block 2a. Enter the manufacturer's model, style, or catalog number assigned to the equipment being requisitioned. Always use the model number, if available. The style number is the next preference. Enter "None" in this block if the model, style or catalog number is not known.

Block 3. Enter the four-digit Federal Supply Class (FSC).

Block 4. Not applicable.

Block 5. Self-explanatory.

Block 6. Place an "X" in the applicable block to indicate whether you desire to physically inspect the item before acceptance.

Block 7. Self-explanatory.

Block 8. Enter the complete description of the item. Continue the description in Block 51 if additional space is needed.

Section II

Block 9. Enter the contractor's name, street address, city, state, and zip code from which the requisition is being initiated. The address should be the one to which inquiries of a technical nature will be referred. Specify the name and telephone number of an individual who will respond to inquiries concerning the request.

Blocks 10 and 10a. Enter the contract number or document number and the date of the document authorizing acquisition of the items shown in Section I. This normally will be a facility contract number. Otherwise it should be a purchase order or procurement request number.

Block 11. Not applicable.

Block 12. Disregard the "Military" block. Show the NASA contract number and program for which the item is to be used.

Block 13. Enter the specific function to be performed by the equipment. When applicable, enter the tolerances, capacities, specifications, etc., that the equipment must satisfy.

Block 14. Determine the date the item must be installed to meet production requirements. From this date deduct the estimated number of days required for installation. Enter the adjusted date in this block.

Block 15. Enter the date by which NASA must issue a Certificate of Nonavailability. Determine the date by subtracting the procurement lead time and 30 days administrative lead time from the date shown in Block 14.

Block 16. Enter the Defense Priority and Allocations System (DPAS) rating assigned to the contract or anticipated purchase order, if applicable.

Block 17. Place an "X" in the appropriate box. If for replacement, identify the item being replaced and the reason for replacement.

Block 18. Place an "X" in the appropriate box. Show the appropriation symbol if the answer is "yes."

Block 19. Not applicable.

Blocks 20 and 21. In addition to the official's title and signature, type the signing official's name, office symbol or name, and telephone number plus extension. The company representative who prepares and submits the requirement to the cognizant NASA certifying office should sign.

Block 22. Self-explanatory.

Block 23. The contracting officer of the NASA installation having jurisdiction over the contract shall certify the need for the item. However, the NEMS Coordinator may certify the need for NASA in-house requirements.

Block 23a. Not applicable.

Block 23b. Enter the name and address of the installation certifying the requirement.

Block 23c. This block is for signature of the property administrator or contracting officer at plant level.

Block 23d. Self-explanatory.

Block 23e. This block is for the signature of NASA installation official certifying the requirement.

Block 23f. Self-explanatory.

Section III

This section is for the NEMS Coordinator's certification of the requirement to DIPEC, when applicable.

Blocks 24 through 27. Self-explanatory.

Section IV

To be completed by DIPEC (a copy is used for admittance to storage site for inspection of property).

Section V

DIPEC or the NEMS Coordinator shall complete this section if equipment is unavailable.

Section VI

Blocks 42 through 45. The requesting official signing section II, Block 20, shall complete Section VI and shall list reasons for non-acceptance in Section VIII, Remarks, or on a separate document attached to the DD Form 1419.

Section VII

Block 46. Enter the complete name, street address, city, state, and zip code of the contractor or installation to which the item is to be shipped. Indicate railhead and truck delivery points when other than the address named.

Blocks 47 and 48. Self-explanatory.

Blocks 49a and b. Ensure that NASA appropriation symbols are included with the work order number.

Block 49c. Enter the NASA appropriation symbol chargeable for any special work ordered (e.g., rebuild, repair, or accessory replacement).

Block 49d. Enter the NASA installation and office symbol for the organization that will make payment for transportation and packing, crating, and handling.

Block 50. Self-explanatory.

Section VIII

Block 51. This block can be used to expand or explain entries made in Blocks 1 through 50. When requisitioning equipment from excess listings, identify the issuing office, list number, date, control number, and item number assigned to the equipment.

Subpart 1845.72—Contract Property Management

1845.7201 Definitions.

Category, as used in this subpart, means a major segment of a contractor's property control system (e.g., acquisition, receiving, records, storage and movement, consumption, utilization, maintenance, physical inventories, subcontractor control, or disposition).

Characteristic, as used in this subpart, means a segment of a functional area subject to analysis or review. Characteristics are classified as Class I, subject to statistical sampling, and Class II, subject to judgment or observation techniques.

Lot, as used in this subpart, means an aggregation of documents, records, articles, or actions selected for review because of common characteristics. For evaluation of the lot, all characteristics for which a lot is tested must be common to all units within the lot.

Property control system, as used in this subpart, identifies a contractor's internal management program encompassing the protection of, preservation of, accounting for, and control of property from its acquisition through disposition.

Supporting responsibility, as used in this subpart, relates to the assignment of a subcontract, or a portion of a prime contract being performed at a secondary location of the prime contractor, to a property administrator other than the individual assigned to the prime location.

1845.7202 General.

This subpart describes major elements of the NASA Contract Property Management Program. It provides guidance to NASA installation personnel responsible for NASA contract property (NASA personal property in the possession of contractors). It applies to all NASA installation personnel charged with this responsibility, including industrial property officers and specialists, property administrators, and plant clearance officers. It also provides detailed procedures for property administration. The NASA Contract Property Management Program includes the following three major elements:

(a) Performance of property administration and plant clearance by DOD under delegations from NASA, pursuant to 1842.101.

(b) Performance of property administration and plant clearance by NASA under certain situations, pursuant to 1842.203.

(c) Maintenance of property administration and plant clearance functional oversight, regardless of delegations, pursuant to 1842.175.

1845.7203 Delegations of property administration and plant clearance.

When delegated to DOD, property administration and plant clearance are performed in accordance with DOD's regulations and procedures, as amended by the NASA Letter of Contract Administration Delegation, Special Instructions on Property Administration and Plant Clearance. These Special Instructions are developed by NASA Headquarters, Supply and Equipment Management Division, Code NIE, and are available from that office upon request. The contracting officer shall issue the Special Instructions with delegations whenever Government property will be involved. Additional or more tailored property instructions are not proscribed but must be coordinated with Code NIE before issuance.

1845.7204 Retention of property administration and plant clearance.

NASA may occasionally retain th property administration and plan clearance function, such as for con tract work performed at the installa tion awarding the contract and no subject to the clause at 1852.245-7 Installation-Provided Governmen Property. In these cases, property a ministration shall be performed in a cordance with subparts 1845.2 throug 1845.7, and plant clearance shall b performed in accordance with FA subpart 45.6 and subpart 1845.6. Und the clause at 1852.245-71, property a ministration and plant clearance a neither delegated nor retained; th are simply not required because t property is treated as installati rather than contract property.

1845.7205 Functional oversight of property administration and plant clearance.

NASA contracting officers retain functional management responsibility for their contracts. Utilization of the contract administration services of another Government agency in no way relieves NASA contracting officers of their ultimate responsibility for the proper and effective management of contracts. The functional management responsibility for contract property is outlined below. Beyond individual contracting officers, each NASA installation has designated an industrial property officer to manage and coordinate property matters among the various contracting officers, technical officials, contractor officials, and delegated property administrators and plant clearance officers. Generally, that individual is responsible for the entire contract property management function outlined below; the installation is responsible for the entire function regardless of how it is organized and distributed. The responsibilities are as follows:

(a) Provide a focal point for all management of contract property, including Government property (Government-furnished and contractor-acquired) provided to universities as well as to industry.

(b) Provide guidance to contracting and other personnel on the NASA property provisions.

(c) To the extent feasible, review property provisions of procurement plans, solicitations, contracts, and modifications for potential problems. Propose changes as necessary.

(d) To the extent feasible, participate in pre-award surveys/post-award orientations when significant amounts of Government property will be involved.

(e) Ensure that vesting-of-title determinations are made and documented pursuant to FAR 35.014(b).

(f) Maintain effective communications with delegated property administrators and plant clearance officers to keep fully informed about contractor performance and progress on any property control problems.

(1) Obtain and review property control system survey summaries for all contracts for which property administration has been delegated. Advise Headquarters Code NIE of any severe or continuing problems.

(2) Provide property administrators copies of all pertinent contract property documentation.

(g) Work with the NASA Equipment Management System (NEMS) Coordinator and contracting officers to ensure contractor reporting to and screening of NEMS.

(1) Monitor contractors' performance in submitting DD Form 1419's or equivalent request format before acquiring centrally reportable equipment (CRE) and in submitting DD Form 1342's or equivalent report format after receiving CRE.

(2) Ensure that an annual NEMS verification is performed in accordance with 1845.505-670(c) and NHB 4200.1, paragraph 4.406b.

(h) Review and analyze NASA Form 1018's, Reports of Government-Owned/Contractor-Held Property.

(1) Ensure an annual comparison of 1018's with NEMS in accordance with NHB 4200.1, paragraph 4.406c, to detect possible over/under reporting to NEMS and possible failure to screen NEMS.

(2) Check new disparities disclosed under subparagraph (1) above with the appropriate property administrator and document the results.

(i) Negotiate, or ensure the negotiation of, facilities contracts when required by FAR 45.302 and 1845.302. Advise Headquarters Code NIE annually of new and completed facilities contracts.

(j) Review property administrators' approvals of relief of responsibility for lost, damaged, and destroyed property and question any excessive or repetitive approvals.

(k) When appropriate, make recommendations to source and performance evaluation boards regarding property management and award fee criteria and evaluations regarding property management.

(l) Monitor plant clearance status to preclude delays in contract closeout.

(m) Maintain contract property files for all transactions and correspondence associated with each contract. Upon receipt of Standard Form 1424, Inventory Disposal Report, and DD

Form 1593, Contract Administration Completion Record, or equivalents, merge all property records for the contract and forward for inclusion with the official completed file.

(n) Perform on-site property administration and plant clearance when they are not delegated to DOD and the property is not subject to the clause at 1852.245-71. (The remainder of this subpart provides detailed guidance on such property administration).

1845.7206 Responsibilities of property administrators and plant clearance officers.

1845.7206-1 Property administrators.

(a) When property administration is not delegated to DOD, the property administrator shall evaluate the contractor's management and control of Government property and ascertain whether the contractor is effectively complying with the contract provisions. The property administrator's responsibilities include—

(1) Developing and applying a system survey program for each contractor under the property administrator's cognizance;

(2) Evaluating the contractor's property control system and approving or recommending disapproval;

(3) Advising the contracting officer of any (i) contractor noncompliance with approved procedures and (ii) other significant problems the property administrator cannot resolve, and recommending appropriate action, which may include disapproval of the contractor's property control system;

(4) Resolving property administration matters as necessary with the contractor's management, personnel from Government procurement and logistics activities, and representatives of the NASA Office of the Inspector General, of the Defense Contract Audit Agency (DCAA), and of other Government agencies; and

(5) Recognizing the functions of other Government personnel having cognizance of Government property and obtaining their assistance when required. (These functions include, but are not limited to, contract audit, quality assurance, engineering, pricing, and other technical areas. Assistance and advice on matters involving analyses of the contractor's books and accounting records and on any other audit matters deemed appropriate shall be obtained from the cognizant auditor.)

(b) The participation of property administrators (or other Government industrial property personnel) in preaward surveys/post-award orientations is required whenever significant amounts of Government property will be involved, in order to reveal and resolve property management problems early in the procurement cycle.

1845.7206-2 Plant clearance officers.

When plant clearance is not delegated to DOD, NASA plant clearance officers shall be responsible for—

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules and DD Form 1342;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for property disposal;

(h) Determining the method of disposal;

(i) Surveillance of any contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, the supply and equipment management officer, other Federal agencies, and higher headquarters in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving the method of sale, evaluating bids, and approving sale prices for any contractor-conducted sales;

(m) Recommending the reasonableness of selling expenses related to any contractor-conducted sales;

(n) Securing antitrust clearance, as required; and

(o) Advising the contracting officer on all property disposal matters.

1845.7207 Initiation of property administration.

1845.7207-1 Control of assignments.

(a) The procurement officer or a designee shall establish and maintain a Contract Assignment Control Register for each contractor, showing the—

(1) Contractor's name and address;

(2) Contract number;

(3) Type of contract;

(4) Date of assignment of the property administrator and his or her name; and

(5) Date of completion or termination of the contract, or transfer of the property administrator.

(b) Property reported received at a contractor's plant without contractual coverage shall be recorded in a suspense file, pending investigation and resolution by the property administrator.

1845.7207-2 Analysis of contract and establishment of contract property control data files.

(a) The property administrator shall analyze each contract providing for Government property to estimate the property administration effort to be applied. The analysis shall be sufficient to establish the management controls necessary for ensuring compliance with contract requirements and development of a suitable system survey program.

(b) The property administrator shall establish Property Summary Data Record containing—

(1) The contractor's name and address, and the contract number;

(2) The type of contract, modifications (including change orders), and special or nonstandard clauses pertaining to Government property;

(3) The date of final review and date of execution and transmittal of the DD Form 1593 or equivalent;

(4) Supporting property administration assignments; and

(5) Name(s) of the property administrator(s) and date(s) of tenure.

(c)(1) The property administrator shall establish a Contract Property Control Data File, which shall include as a minimum—

(i) The Property Summary Data Record;

(ii) A copy of the contract or provisions pertinent to property administration, and comparable data regarding any subcontracts involving Government property;

(iii) The record of initial review, evaluation, and approval of the contractor's property control system; and, if applicable, the record of withdrawal of approval and basis for it, reinstatement of approval, and deviations granted;

(iv) A record of visits and property system surveys performed, including appropriate work papers, deficiencies disclosed, and corrective actions taken;

(v) Contractor's receipts for Government property, when required;

(vi) The record of final review and execution of the property administrator's statement of closure of the contract property account;

(vii) Other pertinent correspondence and documents, including, as applicable, inventory adjustments, investigations, recommendations, and determinations;

(viii) Records concerning supporting property administration delegations; assist actions involving special reviews; and other applicable reviews at subcontractor's plants;

(ix) Records of inspection and audits performed by other activities; and

(x) Reports relating to Government property prepared by the contractor pursuant to the contract.

(2) When more than one contract is involved at one contractor location, records relating to more than one contract shall be transferred to a contractor's General File, and the Property Summary Data Record shall be so annotated.

1845.7208 Initial evaluation and approval of contractor's property control system.

1845.7208-1 General.

Normally, the initial contact by the contract administration office with a contractor is through a post-award orientation. When a conference is held for this purpose, the property administrator shall ensure suitable discussion of property administration requirements and responsibilities. When a conference is not held, the property administrator, upon assignment of a contract, shall forward a letter to the contractor—

(a) Inviting attention to the contractor's responsibilities regarding Government property under the contract, including any specialized controls, and the extent of the contractor's liability for loss, damage, or destruction of Government property during any period in which the contractor's property control system does not have the written approval of the property administrator;

(b) Requesting the name of the contractor's representatives to contact for review and discussion of the proposed property control system; and

(c) Requesting that policies, instructions, and procedures necessary for fully implementing the property control system be available for evaluation.

1845.7208-2 Review of procedures.

(a) Following assignment of an initial contract, the property administrator shall review the contractor's proposed property control system procedures to determine—

(1) Inadequate or questionable areas in the proposed procedures for compliance with NASA contract requirements;

(2) Essential controls not provided by the proposed procedures;

(3) Areas in the proposed procedures requiring physical observation or verification; and

(4) Subcontractors, or secondary locations of prime contract performance, and the need for physical observation or verification of property controls at those locations.

(b) It is normal industry practice to provide for property control by means of written procedures that communicate company standards, techniques, and instructions to operational personnel for uniform application. However, a contractor with few employees may not need written procedures for effective management of Government property. In such cases, the property administrator shall evaluate the adequacy of the contractor's system on the basis of the contractor's explanation of its controls and observation of their application, and shall prepare a brief description of the procedures for inclusion in the Contract Property Control Data File. In the latter instance, the contractor's signature shall be obtained signifying concurrence with the property administrator's written description.

(c) The contractor's plant shall be visited to determine that the contractor's operation of the system provides adequate controls for the Government property to be furnished or acquired.

(d) The means of obtaining the information necessary for approving the contractor's property control system is a matter for the property administrator's judgment. Test examinations and verification in specific categories may be necessary to ensure the reliability of the final evaluation and permit conclusions as to the acceptability of controls for all categories and the system as a whole.

(e) The property administrator shall examine the contractor's procedures to determine whether they meet the contractual requirements for property control. The property administrator shall test and analyze the contractor's system, noting or commenting on the acceptability of the procedures in preparing the record of system evaluation (see 1845.7208-4).

(f) If the contractor's property control system has previously been approved and a new contract requires the expansion of existing or the establishment of additional controls, the property administrator should normally limit the review to the new requirements. If the system is adequate, the property administrator shall record this fact on the Property Summary Data Record for the contract. Notification to the contractor is not required. However, if the property administrator determines that the contractor's property control system does not adequately meet the new contract requirements, the property administrator shall annotate the Property Summary Data Record for the contract involved appropriately and notify the contractor in writing of the required changes.

(g) In reviewing the contractor's property control system, the property administrator shall consider the provisions of 1845.505-14 and ensure that the contractor's system provides for maintaining financial data and furnishing required reports within the time limits specified.

1845.7208-3 Exit interview with the contractor.

Upon completing the review, the property administrator shall hold an exit interview with the contractor to discuss any category in which the controls or procedures were found inadequate and shall advise where corrective action is required before an approval of the system can be granted. When the contractor is willing to correct a deficiency or questionable practice immediately, the documentation supporting the property administrator's findings and conclusions shall include a statement to this effect. The contracting officer responsible for the predominant value of NASA property at the facility shall attend the exit interview with the contractor if major deficiencies exist in the property control system, past deficiencies remain uncorrected, or the value of the personal property involved exceeds $1,000,000.

1845.7208-4 Record of system evaluation.

Upon completing the evaluation of the contractor's system, the property administrator shall prepare a written summary of findings to support approval of the system or any requirement for corrective action before approval. A report of visit or other documentation may be utilized if the participating contractor and Government personnel are listed, actions taken are adequately described, and the property administrator's determination is clearly stated.

1845.7208-5 Notification of deficiencies.

If deficiencies have been found, the property administrator shall prepare a letter to the contractor for signature by the contracting officer, listing them and noting any agreement by the contractor to correct them. The contractor shall respond within 30 days, providing the precise action to be taken and the time required to correct each deficiency.

1845.7208-6 Resolution of differences.

If the contractor's response is unsatisfactory, the contracting officer, along with the property administrator, shall meet with the contractor in an effort to arrive at a mutually satisfactory corrective program. The contractor shall be requested to confirm in writing any new commitments arising from this meeting. If the contractor fails to correct deficiencies in its property control system within a reasonable period, the contracting officer shall refer the matter by memorandum to appropriate levels of management within the NASA installation and Headquarters staff offices, depending on the criticality of the problem involved. The memorandum shall include—

(a) A specific, concise, and documented statement of the problem;

(b) A statement of the contractor's position; and

(c) The recommended action.

1845.7208-7 Letter of approval.

(a) Approval of a contractor's property control system shall be conditioned upon a joint determination, by the property administrator and the contracting officer that no deficiencies exist in the property control system or that only minor deficiencies exist and the contractor has agreed to correct them.

(b) If the contractor's property control system is acceptable, the property administrator shall advise the contractor in writing. However, if the approval was preceded by correspondence between the contracting officer and the contractor (1845.7208-5 and 1845.7208-6), the property administrator shall reference it in the approval and advise the contractor that the corrective action taken or planned is acceptable. A copy of the letter of approval shall be sent to the contracting officer.

(c) If the contract involves Government property at subcontractor plants or prime contractor secondary locations, or both, and the controls for it are determined adequate, the approval shall be expanded to include the procedures governing Government property at those locations.

1845.7209 Property administration during contractor performance.

1845.7209-1 Property administration plan.

(a) The property administrator shall develop a property administration plan for each contractor's plant, covering the property control system utilized on Government contracts. The plan shall provide for surveys and shall be augmented to cover responsibilities imposed by new contracts, changing conditions, or marginal performance. If approval of the contractor's system is unduly delayed at inception of the contract by the contractor's failure to provide an acceptable system, or is withdrawn because of unsatisfactory conditions disclosed after approval, the property administration plan shall be expanded as necessary to reasonably ensure that loss, damage, or destruction of Government property is disclosed in a timely manner. Special attention shall be given to reasonably ensuring that any loss, damage, or destruction occurring during a period when a contractor's system is not approved is identified before approval or reapproval.

(b) The property administrator must exercise judgment in developing the plan and in determining which categories (see Table 1845-1) of the contractor's property control system warrant examination. Dollar amounts and volume of activity, types of property, complexity of the contractor's system, risk to the Government, and previous experience regarding the adequacy of the contractor's controls are factors determining the extent and scope of the system survey plan.

TABLE 1845-1—CATEGORIES, FUNCTIONAL AREAS, CHARACTERISTICS

(This is not an exclusive list and may be modified as necessary.)

Category 1

Acquisition. The process of acquiring Government property either through requisition or transfer from Government sources or through purchase, including purchases from the contractor's stores.

a. Functional Area: Government-furnished property.

Class	Characteristic
I	(1) Item is contractually authorized.
I	(2) Requesting document is properly prepared and processed.
I	(3) Quantity requested is reasonable but not available in existing stocks at the plant site for use on the requiring contract.
I	(4) Requests are controlled until items are received or requirement cancelled. Status file is maintained.
I	(5) Requests are submitted in a timely manner to minimize use of emergency priorities.

b. Functional Area: Contractor-acquired property.

Class	Characteristic
I	(1) Item is contractually authorized.
I	(2) Quantity ordered is reasonable but not available in existing stocks at the plant site for use on the requiring contract.
I	(3) Purchase order distribution, cancellation, and change are properly controlled.
I	(4) Item description, contract number, and price, are reflected in purchase order.
I	(5) Consent or approval by the contracting officer is obtained as required.

Category 2

Receiving. The process of Government property initially entering into a contractor's custody.

Functional Area: Receiving process.

Class	Characteristic
I	(1) Receiving report adequately describes item and shows count and condition. If quantity, condition, or description differs from that shown on inbound shipping document, proper adjustment document is prepared and property administrator is notified.
I	(2) Receiving report is promptly and properly prepared and controlled, and distribution includes copy to property accounting organization.
I	(3) Item received is properly classified (e.g. special tooling).
I	(4) Item is properly identified and marked during the receiving process.
II	(5) Returnable and reusable containers are properly controlled and accounted for.
II	(6) Misdirected shipments are adequately controlled pending receipt of disposition instructions.

Category 3

Records. The official accounting and subsidiary records maintained by a contractor to show status and to control all Government property furnished to or acquired by it.

a. Functional Area: Inventory control (real and personal property).

Class	Characteristic
I	(1) Accounting record conforms to FAR and NASA FAR Supplement requirements and is accurate.
I	(2) Documentation in support of accounting entries is sufficient.
I	(3) Accounting entries are made without undue delay.
I	(4) Stock levels and reorder points are reflected on record, are reasonably sound, and are consistent with the contract.
I	(5) Accounting records are closed by means of proper accounting entry, adequately supported by documentation.
I	(6) Locator system is adequate and accurate.

b. Functional Area: Fabrication records.

Class	Characteristic
I	(1) Records of items fabricated conform to FAR requirements and are accurate.
I	(2) Documentation in support of accounting entries is sufficient.

c. Functional Area: Receipt and issue file.

Class	Characteristic
I	Records of items conform to FAR and NASA FAR Supplement requirements and are accurate.

d. Functional Area: Custodial records.

Class	Characteristic
I	(1) Custodial record is adequate and accurate.
I	(2) Records are properly closed.

e. Functional Area: Scrap and salvage records.

Class	Characteristic
I	(1) Scrap and salvage records are adequate and accurate.
I	(2) Items reclaimed during salvage operations are properly classified.
I	(3) Documentation in support of record is adequate.
I	(4) Records are properly closed.

f. Functional Area: Multicontract cost and material control system.

Class	Characteristic
I	(1) Records conform to FAR requirements and are accurate.
I	(2) Documentation in support of record is adequate.
I	(3) Accounting entries are made promptly.
I	(4) Records are properly closed.

Category 4

Storage and movement. The process of storing and moving all types of Government property includes movement from one point to another for any purpose and protection during movement and storage.

a. Functional Area: Warehousing.

Class	Characteristic
II	(1) Housekeeping is adequate.
II	(2) Government property is segregated from contractor property.
II	(3) Adequate protection of Government property, including hazardous material, precious metals, sensitive items, etc., is provided.
II	(4) Measures for corrosion prevention, age control, etc., are adequate.

b. Functional Area: Internal and external movements.

Class	Characteristic
II	(1) Item is moved under proper authority, supported by issue slip, shipping ticket, location change order, etc.
II	(2) Adequate protection is provided during movement, such as packing, covering, skidding, proper handling equipment and techniques, and safety precautions.
II	(3) Loss or damage occurring during movement is reported to the property administrator.

Category 5

Consumption. The process of incorporating Government-owned property into an end item or otherwise consuming it in performance of a contract.

a. Functional Area: Reasonableness of consumption.

Class	Characteristic
I	(1) Quantities consumed are reasonable when compared to bill of material, material requirement lists, established scrap rates, etc.
II	(2) Serially numbered or selectively matched items are incorporated in appropriate end item.

b. Functional Area: Conservation.

Class	Characteristic
II	(1) Excesses are promptly returned to stores and recorded.
II	(2) Where appropriate, maximum use is made of repair and salvage procedures in lieu of using new items.
II	(3) Where appropriate, a first-in, first-out (FIFO) system is employed with respect to "dated" items.

Category 6

Utilization. The process of utilizing plant equipment, special tooling, special test equipment, material, and space property for the purpose for which furnished or acquired.

a. Functional Area: Plant equipment, special tooling, special test equipment.

Class	Characteristic
I	(1) Item is used for purpose authorized by contract (not diverted to other use).
I	(2) Degree of utilization justifies retention.

b. Functional Area: Material and space property.

Class	Characteristic
I	(1) Item is used for purpose authorized (not diverted to other use).
I	(2) Degree of utilization justifies retention of stock on hand.

Category 7

Maintenance. The process of providing the amount of care necessary to obtain a high quality of production and the most useful life of Government property.

a. Functional Area: Preventive and corrective maintenance.

Class	Characteristic
I	(1) Item is scheduled for periodic maintenance (including technical order compliance).
I	(2) Maintenance is performed according to schedule.
I	(3) Records of normal maintenance and corrective actions are adequate and accurate.

b. Functional Area: Capital-type rehabilitation (includes real property).

Class	Characteristic
I	(1) Inspection is scheduled to determine need for major repair, replacement, or other rehabilitation.
II	(2) Inspection is performed as scheduled and results are reported.
II	(3) Rehabilitation is accomplished when authorized.
II	(4) Records of major repair, replacement, or other rehabilitation, including cost, are adequate and accurate.

Category 8

Physical inventories. The process of physically inventorying Government property and comparing it to records of the property (includes locating and counting, tagging or marking, describing, recording, and reporting results to the property administrator).

a. Functional Area: Performance.

Class	Characteristic
II	(1) Periodic physical inventories are performed.
II	(2) Physical inventories are performed upon termination or completion of contract unless waived by property administrator.
I	(3) Inventoried property is appropriately tagged or marked.
I	(4) Inventory count is accurate.
II	(5) Inventory procedures provide that personnel who perform inventory are not those who maintain the property records or have custody of the property, unless the contractor's operation is so small as to make this impracticable.
II	(6) Results of inventories are reported to property administrator within 30 days.

b. Functional Area: Reconciliation and adjustment.

Class	Characteristic
II	(1) Each instance of loss and discovery of unrecorded property is investigated.
II	(2) Causes are determined for above discrepancies.
II	(3) Actions necessary to prevent recurrence are determined and taken for above discrepancies.
II	(4) Adjustments to records (other than for property losses) are made within 30 days.
II	(5) Adjustments to records for property losses are made within 30 days of contracting officer's or property administrator's notification of relief of responsibility or other determination.

Category 9

Subcontract control. The process of prime contractor control over subcontractors with respect to Government property.

a. Functional Area: Prime contractor controls.

Class	Characteristic
I	(1) Subcontract reflects adequate instructions with respect to subcontractor responsibilities.
I	(2) Records of Government property in possession of subcontractors conform to FAR and NASA FAR Supplement requirements.
I	(3) Adequate documentation supports accounting entries.
II	(4) Prime contractor's surveillance over Government property in possession of subcontractors is adequate.

b. Functional Area: Subcontractor control. If the prime contractor has designated the subcontractor's records and controls as the official contract records and controls of Government property in the subcontractor's possession, or if adequacy of controls cannot be determined by review of the prime contractor's control, the subcontractor's property control system shall be evaluated in the same manner as that of a prime contractor, in accordance with procedures and criteria set forth in this subpart 1845.72.

Category 10

Disposition. The process of requesting disposition instructions and effecting disposal of Government property.

a. Functional Area: Disclosure of excess.

Class	Characteristic
I	(1) Excess items are screened for use on other contracts before declaration as excess.
I	(2) Items determined excess are promptly reported.
I	(3) Declaration as excess is complete and accurate.
I	(4) Item was allocable to contract from which declared excess.

b. Functional Area: Disposal.

Class	Characteristic
I	(1) There is proper authority for disposition.
I	(2) Item was disposed of within a reasonable time after authority was received.
I	(3) Identification tag is removed from item prior to disposal, when appropriate.
I	(4) Documentation of disposition is complete and reflects authority, disposal action, and date of disposal and is posted to record.
I	(5) When appropriate, proceeds have been credited to the Government.

(End of Table 1845-1)

1845.7209-2 System surveys: surveillance.

The property administrator shall conduct a complete system survey annually to obtain thorough knowledge of the contractor's efficiency and system of property control. Completion of a system survey involving complex property control systems may require detailed tests and evaluations over an extended period of time. If deficiencies in physical control or records are disclosed, the property administrator must (a) ensure that the contractor takes corrective action and (b) evaluate its effectiveness. In such instances, test and evaluation of any one category shall be completed as expeditiously as possible, and the working papers and analysis shall be retained for consideration and incorporation into the summary and survey case file.

1845.7209-3 System surveys: scheduling and planning.

(a) At the beginning of each calendar year, the property administrator shall prepare a schedule showing the names of the contractors and the dates on which each system survey is to be initiated and completed.

(b) Before initiating any system survey, the property administrator shall establish a survey plan providing, as a minimum—

(1) Identification and listing of the categories, functional areas, and characteristics to be evaluated (see Table 1845-1);

(2) Evaluation of approved property control procedures applicable to the categories to be examined, and noting of any portions of them that should be reviewed with operating personnel for possible updating (if a functional area of the property control system is not covered by procedures, no attempt should be made to survey that area at that time, but that area should be recorded as unsatisfactory and action taken to correct the condition); and

(3) Directions for preparing work papers necessary to document the file.

1845.7209-4 Testing the system.

In conducting tests of the contractor's property control system, the following factors should be considered to assure adequate coverage of requirements peculiar to particular classes of property and functional areas:

(a) *Materials.* Materials should be considered as bulk quantities, as contrasted to individual items. Examinations should be directed to—

(1) Tracing inbound transportation units from:

(i) Bills of lading or other transportation documents to receiving reports, in order to verify the receiving reports and to ensure that proper action is taken on shortages, damages, and other discrepancies, and

(ii) Stock records to assure that the receipts were accurately posted:

(2) Abstracting nomenclature and balance data from stock records and making physical counts to determine accuracy of the stock records;

(3) Tracing posting of credits to (i) stock records (by date, reference number, and quantity) and (ii) issue documents, in order to assure accuracy of the postings and validity of the documents (signature by authorized individual and indication of reasons for issue or point of delivery, or both, to indicate proper contract use); and

(4) Determining, to the extent practicable at the point of receipt and use, whether undue quantities are issued, charged to cost, and held on the plant floor rather than being held under better security in stores.

(b) *Custodial items.* Issues shall be traced from stores records to tool cribs, office stock rooms, uniform rooms, and the like, to determine whether they are taken into account as part of a sound control system. It should be determined that issues to contractor personnel are covered by tool chits, uniform slips, or other mechanisms to ensure return, or ability to locate items to be returned, ensuring that new items are not issued without return of worn-out items or that suitable explanation is provided.

(c) *End items.* General techniques for surveying materials are applicable to end items placed in storage pending shipment. Examination shall include tracing from Government acceptance records of the contractor's claims for reimbursement to physical quantities on hand and quantities on validated shipping documents.

(d) *Plant equipment costing less than $5,000.* If summary stock records are used for this class of property, examination using the "bulk quantities" approach in paragraph (a) of this section is applicable but shall also cover—

(1) Identification if required pursuant to FAR 45.505-5 (any identification numbers shall be physically verified); and

(2) Location as prescribed in FAR 45.505(g), creating need for physical verification of presence or absence of the property in the location shown by the location record.

(e) *Plant equipment costing $5,000 or more.* Testing on an item-by-item basis is usually required to achieve desired results. Determinations demanding special attention include whether—

(1) Government screening and approval requirements are observed;

(2) Classification of property is accurate, both at time of requisition or purchase and at time of receipt, through the use of Cataloging Handbooks H2-1, H2-2, and H2-3;

(3) An item is actually applied to the requirement for which acquired, and, if deviation is made, that any necessary notice and Government approval have been obtained;

(4) Receiving documentation is complete and accurate, indicating assignment of identification number, treatment of accessory and auxiliary equipment as required, and the DD Form 1342 (DoD Property Record), or equivalent format, is prepared and processed when required by 1845.505-670;

(5) From physical inspection of the property, the equipment records are accurate, including location and classification as to use (examination shall be conducted from property to records and from records to property); and

(6) Disposition is initiated as required if equipment is no longer required at the plant (examination shall include the adequacy of the procedure for preparing and submitting DD Form 1342 (Property Record), or equivalent format, where specified, propriety of authority for shipment, and proper accounting for accessory and auxiliary equipment).

(f) *Special test equipment.* The examination of special test equipment shall be essentially the same as for plant equipment costing $5,000 or more, except for recognizing the greater complexity of assemblies classified as single items and the possible need for assistance and advice of engineering personnel. Examinations shall include tracing of individual components into the assembly to assure a clear trail, particularly with respect to general purpose test equipment components, and propriety of disposition of components upon disassembly.

(g) *Special tooling.* Testing for plant equipment, as in paragraphs (d) and (e) of this section, may be used as a guide to establish the method and sampling for special tooling. When option as to title to special tooling is involved under terms of the contract (see the clause at FAR 52.245-17, Special Tooling), examination need only be sufficient to comply with the request of the contracting officer.

(h) *Real property.* After initial turnover of real property to a contractor, tests and examinations normally shall be directed to work orders of the contractor and documentation from Government sources as to additions and other capital improvements or disposals or capital decreases.

(i) *Scrap and salvage.* Tests relating to scrap and salvage may be similar to those for materials as outlined in paragraph (a) of this section. However, special attention should be given to—

(1) Tracing from credit entries on materials records (showing turn-in to scrap) to corresponding debits to scrap records;

(2) Determining from analysis of consumption of materials over a given period that the quantities indicated as being scrapped or spoiled are matched with comparable receipts in the scrap and salvage accounts; and

(3) Determining that, when conversions of units of property to pounds of scrap or from estimated to scale weights or to other units of measure are made, the formula for the conversion is shown on the document affected or is readily available in the approved contractor procedure.

(j) *Analyzing consumption of materials.* It shall be determined by both physical examination and analysis of records that quantities consumed are for proper purposes and in reasonable amounts. In analyzing consumption of component parts or other production materials, unit allowance (equalling amount required per end-item plus normal spoilage) for each line item of materials may be available in the contract, bill of materials, blueprints, or shop drawings of items fabricated, or in cost computations supporting the end-item price. If such unit allowance information is not available, technical personnel may be consulted as to whether quantities consumed are within accepted industry standards.

(k) *Testing of physical inventories.* The property administrator has the option of conducting tests of the contractor's physical inventories either during the performance of the inventory or subsequent to its completion. In either event, tests shall evidence physical counts of selected items without knowledge of record balances, verification of the entries on count slips, comparisons with records, preparation of documents necessary to any adjustments required, approval of adjustments, and the referral of lists of adjustments to the property administrator pursuant to FAR 45.508-2.

(l) *Examination of maintenance program.* The property administrator shall trace the actions scheduled to determine whether they have been performed and that the actions stated by the contractor's procedures have been included. Also, records of the maintenance or repair shop or the contractor's purchase orders shall be examined as to causes of breakdowns of equipment to determine whether they were the result of inadequate preventive or routine maintenance.

1845.7209-5 Performing the system survey.

In performing the system survey, the property administrator shall follow the procedures in paragraphs (a) through (e) of this section.

(a)(1) The lot size shall be estimated. Insofar as possible, lots selected shall consist of all the following current operations of the contractor:

(i) Those transactions (excepting disposition transactions) that have occurred during the last 90 days preceding the date of sampling and the documents recording those actions. (If no transactions have taken place during the last 90 days, samples will be taken from transactions going back to the last system survey.)

(ii) Articles in the possession or control of the contractor at that time.

(iii) Dispositions occurring since the last survey was made.

(2) The lot should encompass the maximum number of units possible within a functional area. For example, transactions pertaining to special tooling, special test equipment, and plant equipment may be combined into a single lot and sampled for their common characteristics. Characteristics not common to units sampled shall be extracted for evaluation as a part of a separate lot.

(b) Sample sizes and statistical sampling techniques shall be in accordance with 1845.7213.

(c) After the examinations are performed and the findings recorded, the findings shall be analyzed and the conclusions and recommendations recorded. Decisions as to satisfactory or unsatisfactory conditions shall be made for each lot at the functional area level.

(d) If any category is found unsatisfactory during a survey, the property administrator shall determine the effects upon the complete system. All other applicable categories shall be surveyed to identify other defects and the extent of defectiveness in the overall system.

(e) The property administrator shall discuss problems disclosed during the survey with the contractor's personnel as they are noted, or during the exit interviews, and shall strive to resolve differences informally. Resolved problem areas shall be reported in the record of system evaluation, with the notation that they have been corrected.

1845.7209-6 System survey summary.

(a) The property administrator shall prepare a formal record at the conclusion of each system survey in the format set forth below:

(1) *Introduction:* Contractor's name and address, period of survey, and types of property involved.

(2) *Method used:* Explain method of performing the survey.

(3) *Conclusions:* State conclusions reached (if unsatisfactory categories, functional areas, or characteristics are found, identify the defects found).

(4) *Action required:* State any actions necessary to correct unsatisfactory conditions.

(b) The property administrator shall forward a summary of the system survey to the contractor, advising of any unsatisfactory conditions and requesting the contractor to correct them within the time limitations agreed to during the exit interview. The property administrator shall also advise the contractor in this letter that failure to correct the unsatisfactory conditions may result in disapproval of its property control system. A copy of the summary shall also be retained in a survey case file, and whenever unsatisfactory conditions have been disclosed, a copy of the summary shall be provided to the administrative contracting officer. When conditions dictate (e.g., indication of significant noncompliance with contract requirements or other continued failures jeopardizing the interest of the Government), the purchasing office and the pre-award survey monitor shall also be advised in writing.

1845.7209-7 Correction of unsatisfactory conditions.

If unsatisfactory conditions are disclosed, the property administrator shall ensure that corrective action is taken. If the contractor fails to take corrective action or to respond to the letter forwarded as prescribed in 1845.7209-6 above, the property administrator shall proceed in accordance with 1845.7208-6 and FAR 45.104(c).

1845.7209-8 Survey case file.

The property administrator shall establish a case file for each system survey, containing the survey plan, work papers, and summary. The case file shall be maintained in the Contract Property Control Data File or the general file which the property administrator maintains for matters pertaining to that contractor.

1845.7209-9 Additional administrative responsibilities.

The initial review, evaluation, and subsequent visits should give the property administrator a reasonable indication of future workload with each contractor. Loss, damage, destruction, or excessive consumption of Government property demand the property administrator's significant and prompt attention, particularly when the contractor's system is not approved.

1845.7209-10 Declaration of excess property.

A problem often disclosed by systems surveys is the failure of a contractor to report Government property not needed in performance of the contract (excess). The property administrator shall fully document and report any such finding to the administrative contracting officer. After a report of excess received from a contractor has been referred to the plant clearance officer for screening and ultimate disposition, the property administrator shall ensure prompt disposition. For centrally reportable plant equipment, the property administrator shall—

(a) Assure the preparation and submission of individual reports (DD Form 1342 or equivalent) required of the contractor;

(b) Verify to permit certifications required by the forms; and

(c) Transmit the report to the NASA Industrial Property Officer.

1845.7210 Closure of contracts.

1845.7210-1 Completion or termination.

Upon completion or termination of a contract, the property administrator shall—

(a) Monitor the actions of the contractor in returning excess Government property not referred to the plant clearance officer; and

(b) Advise the cognizant plant clearance officer as to the existence at a contractor's plant of residual property requiring disposal.

1845.7210-2 Final review and closing of contracts.

(a) When informed that disposition of Government property under a contract has been completed, the property administrator shall perform a final review and sign a determination that—

(1) Disposition of Government property has been properly accomplished and documented;

(2) Adjustment documents, including any request of the contractor for relief from responsibility, have been processed to completion;

(3) Proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the contracting officer;

(4) All questions as to title to property fabricated or acquired under the contract have been resolved and appropriately documented; and

(5) The contract property control record file is complete and ready for retirement.

(b) When final review pursuant to paragraph (a) of this section reveals that such action is proper, the property administrator shall accomplish and sign a DD Form 1593, Contract Administration Completion Record, or equivalent.

(c) The executed DD Form 1593 shall be forwarded to the contracting officer, the Property Summary Data Record shall be so annotated, and the contracting officer shall include it in the contract file.

1845.7211 Special subjects.

1845.7211-1 Government property at alternate locations of the prime contractor and subcontractor plants.

(a) Government property provided to a prime contractor may be located at other plants of the prime contractor or at subcontractor locations. The prime contractor is accountable and responsible to the Government for this property.

(b) A Government property administrator cognizant of the location of the property shall normally be designated to (1) perform required surveys of the property control system and (2) exercise surveillance over the property as a supporting responsibility.

(c) If the property administrator determines that supporting property administration is required, he or she shall write the cognizant contract administration office asking that a property administrator be assigned. The request for supporting property administration shall include—

(1) The name and address of the prime contractor;

(2) The prime contract number;

(3) The name and address of the alternate location of the prime contractor, or of the subcontractor where the property will be located;

(4) A listing of the property being furnished, or, if property is being acquired locally, a statement to this effect; and

(5) A copy of the subcontract or other document under which the property will be furnished or acquired.

(d) Concurrent with the action cited in paragraph (c) of this section, the property administrator shall ascertain whether the prime contractor will perform the necessary reviews and surveillance with the contractor's own personnel, or elect to rely upon the system approval and continuing surveillance by a supporting property administrator of the property control system at the alternate location or subcontractor plant. If the prime contractor advises that it will accept the findings of a supporting property administrator, a statement in writing to that effect shall be obtained. If the prime contractor does not so elect, it shall be required to perform the requisite reviews and surveillance and document its actions and findings.

(e) If a single item or limited quantities of property will be located at an alternate location or subcontractor plant, the property administrator may determine that supporting property administration is unnecessary, provided—

(1) The prime contractor's records adequately reflect the location and use of the property;

(2) The nature of the property is such that the possibility of its use for unauthorized purposes is unlikely; and

(3) The nature of the property is such that a program of preventive maintenance is not required.

(f) When supporting property administration will not be requested, the services of a property administrator in the contract administration office cognizant of the site where the property is located may be requested on an occasional basis for special reviews or such other support as may be necessary. Repeated requests for assistance indicate a requirement for requesting supporting property administration.

1845.7211-2 Loss, damage, or destruction of Government property.

(a) Normally, contract provisions provide for assumption of risk of loss, damage, or destruction of Government property as described below:

(1) Sealed-bid and certain negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided under the contract (see the clause at FAR 52.245-2, Government Property (Fixed-Price Contracts)).

(2) Other negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided under the contract, with the exceptions set forth in the clause at FAR 52.245-2, Alternate I and Alternate II.

(3) Cost-reimbursement contracts (see the clause at FAR 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)) provide that the Government assumes the risk for all Government property provided under the contract when there is no willful misconduct or lack of good faith of any of the contractor's managerial personnel as defined in the contract.

(4) There are certain events for which the Government does not assume the risk of loss, damage, or destruction of Government property, such as risks the contract expressly requires the contractor to insure against. Therefore, before reaching a conclusion or making a determination, the contracting officer shall obtain property administrator review of the contract clause and shall obtain advice from appropriate legal counsel on questions of legal meaning or intent.

(5) "Willful misconduct" may involve any intentional or deliberate act or failure to act causing, or resulting in, loss, damage, or destruction of Government property.

(6) "Lack of good faith" may involve gross neglect or disregard of the terms of the contract or of appropriate directions of the contracting officer or the contracting officer's authorized representatives. Examples of lack of good faith may be demonstrated by the failure of the contractor's managerial personnel to establish and maintain proper training and supervision of employees and proper application of controls in compliance with instructions issued by authorized Government personnel.

(b) If part of the contractor's system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, or destruction of Government property. The property administrator shall give special attention to reasonably ensuring that any loss, damage, or destruction occurring during a period when a contractor's system is not approved is identified before approval or reinstatement of approval.

1845.7211-3 Loss, damage, or destruction of Government property while in contractor's possession or control.

(a) The property administrator shall require the contractor to report any loss, damage, or destruction of Government property in its possession or control (including property in the possession or control of subcontractors) as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose (1) consumption of Government property considered unreasonable by the property administrator or (2) loss, damage, or destruction of Government property not reported by the contractor, the property administrator shall prepare a statement of the items and amount involved. This statement shall be furnished to the contractor for investigation and submission of a written report to the property administrator relative to the incidents reported.

(c) The contractor's reports referenced in paragraphs (a) and (b) of this section shall contain factual data as to the circumstances surrounding the loss, damage, destruction, or excessive consumption, including—

(1) The contractor's name and the contract number;

(2) A description of items lost, damaged, destroyed, or unreasonably consumed;

(3) The cost of property lost, damaged, destroyed, or unreasonably consumed and cost of repairs in instances of damage (in event actual cost is not known, use reasonable estimate);

(4) The date, time (if pertinent), and cause or origin of the loss, damage, destruction, or consumption;

(5) Known interests in any commingled property of which the Government property lost, damaged, destroyed, or unreasonably consumed is (or was) a part;

(6) Insurance, if any, covering the Government property or any part or interest in any commingled property;

(7) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption and to prevent repetition of similar incidents; and

(8) Other facts or circumstances relevant to determining liability and responsibility for repair or replacement.

(d) The property administrator shall investigate the incident to the degree required to reach a valid and supportable conclusion as to:

(1) The contractor's liability for the loss, damage, destruction, or unreasonable consumption under the terms of the contract, and

(2) The course of action required to conclude the adjustment action.

When required, the assistance of the quality assurance representative, industrial specialist, insurance officer, legal counsel, or other technician will be secured. When the contractor acknowledges liability, the property administrator shall forward a copy of the credit memorandum or other adjusting document to the administrative contracting officer and auditor, if appropriate, to assure proper credit. If analysis of contract provisions and circumstances establishes that the loss, damage, destruction, or consumption constitutes a risk assumed by the Government, the property administrator shall so advise the contractor in writing, thereby relieving the contractor of responsibility for the property. A copy of the documentation and notification to the contractor shall be retained in the Contract Property Control Data File for the contract.

(e)(1) If the property administrator concludes that the contractor is liable for the loss, damage, destruction, or unreasonable consumption of Government property, he or she shall forward the complete file with conclusions and recommendations to the contracting officer for review and determination. The file shall contain—

(i) A statement of facts as supported by investigation;

(ii) Recommendations as to the contractor's liability and its amount;

(iii) Recommendations as to action to be taken with regard to third party liability, if appropriate;

(iv) Requirements for disposition, repair, or replacement of damaged property; and

(v) Other pertinent comments.

(2) A copy of the contracting officer's determination shall be furnished to the contractor and the property administrator, and a copy shall be retained in the contracting officer's files. The property administrator's copy shall be filed in the Contract Property Control Data File for the contract when all pertinent actions, such as compensation to the Government or repair or replacement of the property, have been completed.

1845.7211-4 Financial reports.

The property administrator is responsible for obtaining financial reports as prescribed in 1845.505-14 for all contracts assigned to him or her. Reports shall be accumulated, reviewed and distributed as required. Contractors are required to submit separate reports on each contract that contains the property reporting clause (see 1852.245-73) except as noted in 1845.7101-4(c).

1845.7212 Contractor utilization of Government property.

1845.7212-1 Utilization surveys.

(a) The property administrator is responsible for ensuring that the contractor has effective procedures for evaluating Government property utilization. However, when necessary, the contract administration office shall provide specialists qualified to perform the technical portion of utilization surveys to assist the property administrator in determining the adequacy of these procedures.

(b) Upon assignment of an initial contract under which Government-owned plant equipment in particular will be provided to a contractor, the property administrator shall ensure that the contractor has established effective procedures and techniques for controlling its utilization. The property administrator, with the assistance of technical specialists, if necessary, shall evaluate these procedures. A record of the evaluation shall be prepared and become a part of the property administration file. If the procedures are determined inadequate, the record shall identify the deficiencies and the corrective actions necessary. If the deficiencies are not corrected by the contractor, the property administrator shall promptly refer the matter to the contracting officer.

(c) The property administrator shall perform annual surveys of the contractor's procedures related to utilization of Government-owned plant equipment. At contractor facilities having a substantial quantity of plant equipment, the surveys should normally be conducted on a continual basis, reviewing equipment utilization records and physically observing a group of preselected items during each portion of the survey. Surveys shall be conducted to the degree determined necessary, considering the findings of prior surveys and the contractor's performance history in identifying and declaring equipment excess to authorized requirements. The contractor shall be required to justify, by specific Government programs, the retention of all Government-owned plant equipment. The property administrator shall make maximum use of contractor's machine loading data, order boards, production planning records, machine time records, and other production control methods.

(d) The property administrator shall conduct a special survey when a significant change occurs in the contractor's production schedules, such as a termination, completion of a contract, or a major adjustment in a program. Special surveys may be limited to a given department, activity, or division of a contractor's operation.

(e) In the absence of adequate justification for retention, the contractor shall identify and report Government-owned plant equipment in accordance with FAR 45.502(g) and FAR 45.509-2(b)(4). Items that are part of approved inactive package plants or standby lines are exempted from utilization surveys. The contracting officer shall ascertain periodically whether existing authorizations for standby or lay-away requirements are current.

1845.7212-2 Records of surveys.

The property administrator shall prepare a record incorporating written findings, conclusions, and recommendations at the conclusion of each survey. If appropriate, the property administrator's record may be limited to a statement expressing concurrence with the reports of other specialists. The property administrator shall retain one copy of each record in the property administration file.

1845.7212-3 Scope of survey.

The property administrator shall consider and use as appropriate the following in preparing for, conducting, and recording the results of the plant equipment utilization surveys:

(a) Identification of contracts under which plant equipment was furnished or acquired.

(b) Number and dollar value of plant equipment items in contractor's possession.

(c) Adequacy of equipment use records.

(d) Identification of contracts for which use of plant equipment is authorized.

(e) Other authorized use (Government or commercial) of the plant equipment, whether required approvals have been obtained, and whether rental payment is required.

(f) Planned machine loadings, including performance of a physical review of selected plant equipment items.

(g) Whether contractor-owned equipment of like function is loaded before loading Government-owned plant equipment.

(h) Items reported by quality assurance representatives or other personnel to be in a questionable use and utilization status.

(i) Items of plant equipment that may be made available for other use by combining the work of two or more machines on a single machine with low utilization rate. In such case the survey record should indicate the date the DD Form 1342, DOD Property Record or equivalent format, was forwarded to the NASA contracting officer.

1845.7213 Statistical sampling.

(a) *General.* Statistical sampling supports, but does not replace, the property administrator's judgment. It is used to evaluate and determine the performance level for each functional area and category within each property control system. The lot to be examined for defects should encompass the maximum possible number of line items of property, records and documents. All items in the lot must have common characteristics and the same control elements of the property control system must apply or more than one lot will be necessary. Items selected for sampling may be used to examine characteristics of more than one category (i.e., items selected under records may be used to examine characteristics of acquisition, stock control, storage and movement, maintenance, physical inventory, utilization, and consumption).

(b) *Use of statistical sampling plans.* The Government's risk shall not exceed 10% excepting any slight variations due to changes in lot sizes. Table 1845-2 contains sampling plans for use in achieving a confidence level of 90%, i.e., there is 90% confidence of rejecting lots having 10% or more defectives. The sample sizes to be examined may be determined from either Table 1845-2A or B.

(c) *Random number table.* (1) Use of a table of random numbers is a common technique for drawing a sample. (A table is available from the NASA Headquarters Supply and Equipment Management Division

(Code NIE).) However randomization techniques may be applied provided they are defined beforehand in the property administration survey plan and exhibit clear protection against bias. In any event, the number of items in the lot must not be overestimated to avoid selection of random numbers greater than the lot. For example, if the lot is 9,000, only numbers lower than 9,001 shall be selected. Using a random table to draw a random sample requires the following four steps:

(i) *First step.* A pattern must be established between the numbers in the table and items in the lot to be sampled. It is possible to use the whole random number or any portion thereof. For instance, the number 18,967 may appear in the table. If the lot size is more than 99 but less than 1,000, a three digit number is required and either the first three digits (189) or the last three (967) may be used. If the lot size is more than 999 but less than 10,000, a four digit number is required and either the first four digits (1,896) or the last four (8,967) may be used. Once this pattern has been established, it must be consistently used throughout the sample selection process.

(ii) *Second step.* A procedure for selecting the numbers from the table must be selected. Any systematic path for going through the table, if the path is clear and does not cross over or reuse any number previously used, is acceptable. It is possible to proceed across rows, down columns, diagonally, clockwise, counterclockwise, or in some combinations of these methods; however, it is usually desirable to choose a simple pattern and go down columns or across rows.

(iii) *Third step.* The starting point in the table shall be selected at random. The most used method is to open the table of random numbers to any page and to use the number indicated by an arbitrarily placed pencil point.

(iv) *Fourth step.* Beginning at the starting point and proceeding through the table as planned in the second step, record the numbers found in succession in the table, using all or part of the number as planned in the first step. Duplicate numbers shall be skipped. The selection process shall be continued until the required sample size is drawn.

(2) Numbers taken from the random table shall be arranged and recorded in numerical order. If the units of the lot to be examined are already consecutively numbered, the units having the numbers corresponding to those taken from the random table become the sample units. Otherwise, the sample units shall be found by counting to the numbers taken from the random table.

TABLE 1845-2A—Single Sampling Plan

Lot size	Sample size	Limits	
		Satisfactory	Unsatisfactory
1-17	All	0	1
18-50	17	0	1
51-90	31	1	2
91-150	44	2	3
Over 150	65	3	4

TABLE 1845-2B

Double Sampling Plan

Lot range	Sample size 1	Accept if defects in Sample 1 are	Reject if defects in Sample 1 are	Continue with Sample 2 if defects in Sample 1 are	Sample size 2	Accept if sum of defects in Samples 1 and 2 equals or is less than	Reject if sum of defects in Samples 1 and 2 equals or exceeds
1-18	All	0	1				
19-50	19	0	1				
51-90	21	0	2	1	21	1	2
91-150	25	0	3	1 or 2	25	2	3
151-400	32	0	4	1, 2, or 3	32	3	4
401-10,000	34	0	4	1, 2, or 3	34	3	4
10,001-35,000	40	0	5	1, 2, 3, or 4	40	4	5

TABLE 1845-2B—Continued

Double Sampling Plan

Lot range	Sample size 1	Accept if defects in Sample 1 are	Reject if defects in Sample 1 are	Continue with Sample 2 if defects in Sample 1 are	Sample size 2	Accept if sum of defects in Samples 1 and 2 equals or is less than	Reject if sum of defects in Samples 1 and 2 equals or exceeds
35,001–100,000	46	0	6	1, 2, 3, 4, or 5	46	5	6
100,000+	52	0	7	1, 2, 3, 4, 5, or 6	52	6	7

PART 1846—QUALITY ASSURANCE

Subpart 1846.2—Contract Quality Requirements

Sec.

1846.270 Contract clauses for space flight-related operations.

Subpart 1846.4—Government Contract Quality Assurance

1846.470 Solicitation provision and contract clauses.
1846.470-1 Solicitation provision.
1846.470-2 Contract clauses.

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.
1846.670-1 General.
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1846.671 Procurement quality assurance on shipments between contractors.
1846.672 Preparing DD Forms 250 and 250c.
1846.672-1 Preparation instructions.
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1846.672-3 Correction instructions.
1846.672-4 Invoice instructions.
1846.672-5 Packing-list instructions.
1846.672-6 Receiving instructions.
1846.673 Distribution of DD Forms 250 and 250c.
1846.674 Contract clause.

Subpart 1846.7—Warranties

1846.703 Criteria for use of warranties.
1846.703-70 Additional criteria.
1846.704 Authority for use of warranties.
1846.709 Warranties of commercial items.
1846.709-70 Limitation.
1846.770 Administration.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28330, July 5, 1989, unless otherwise noted.

Subpart 1846.2—Contract Quality Requirements

1846.270 Contract clauses for space flight-related operations.

(a) The contracting officer shall insert the clause at 1852.246-70, Space Transportation System (STS) Personnel Reliability Program, in solicitations and contracts involving critical positions in accordance with NASA Management Instruction 8610.13. The clause, however, shall not be used in procurements for flight crew members or payload specialists when these individuals are covered by other NASA Management Instructions that have screening requirements equivalent to those in NMI 8610.13 (for example, NMI 7100.16, Payload Specialists for NASA-Related Projects).

(b) The contracting officer shall insert the clause at 1852.246-73, Manned Space Flight Item, in solicitations and contracts for manned space flight hardware and flight-related equipment where it has been determined by the technical requirements initiator that the highest available quality standards are necessary to ensure astronaut safety.

Subpart 1846.4—Government Contract Quality Assurance

SOURCE: 55 FR 27089, June 29, 1990, unless otherwise noted.

1846.470 Solicitation provision and contract clauses.

1846.470-1 Solicitation provision.

The contracting officer shall consider inserting in solicitations the provision at 1852.246-74, Requirement for

Quality and Productivity Improvement (Q/PI) Plan, when in the judgment of the contracting officer and the program manager, a Q/PI plan would be meaningful and appropriate, and the estimated cost of the contract will be more than $2.5 million, annually. The proposed Q/PI plan shall be evaluated under Other Considerations. Any fee associated with a Q/PI plan shall not be considered as an amount over and above the total fee negotiated for the contract and shall not, when combined with all other price or fee considerations, exceed the limitations prescribed in FAR 15.903(d)(1).

1846.470-2 Contract clauses.

(a) The contracting officer may insert a clause substantially as stated at 1852.246-71, Government Contract Quality Assurance Functions, in solicitations and contracts. Insert the items involving quality assurance, the applicable functions (e.g., preliminary inspection, final inspection, acceptance), and the place(s) of performance appropriate for the particular procurement. See FAR 46.401.

(b) The contracting officer shall insert the clause at 1852.246-75, Quality and Productivity Improvement Plan, in all solicitations containing the provision at 1852.246-74, Requirement for Quality and Productivity Improvement Plan, and in contracts resulting therefrom.

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.

1846.670-1 General.

(a) This subpart 1846.6 contains procedures and instructions for using, preparing, and distributing the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and suppliers' commercial shipping/packing lists used to evidence Government procurement quality assurance (PQA).

(b) MIRRs are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities to document PQA, acceptance of supplies and services, and shipments. MIRR's are not required to be used for—

(1) Shipments by subcontractors when direct shipment is not made to the Government;

(2) Shipment of contractor inventory (see FAR 45.601); or

(3) Movement of Government property unless for original acquisition.

(c) To preclude delays in shipments or payments and avoid multiple corrections, contractors are encouraged to consult the cognizant Government representative regarding implementation of this subpart.

1846.670-2 Applicability.

(a) This subpart applies to all deliveries of supplies or services procured by or for NASA except—

(1) Procurements effected under FAR part 13;

(2) Negotiated subsistence procurements;

(3) Subcontracts under which direct shipment is not made to the Government; or

(4) Contracts for which the end item is a technical or scientific report.

(b) When NASA provides PQA and/or acceptance services for non-NASA activities, the MIRR shall be prepared in accordance with the instructions of this subpart unless the contract specifies otherwise.

1846.670-3 Use.

The DD Form 250 is a multipurpose report used for—

(a) PQA—to provide evidence of PQA at origin or destination;

(b) Acceptance—to provide evidence of acceptance at origin or destination;

(c) Packing list;

(d) Receiving;

(e) Shipping;

(f) Contractor invoice;

(g) Contractor invoice support; and

(h) Contractor internal use.

1846.670-4 Application.

(a) The DD Form 250 shall be used for delivery of contract line, contract subline, exhibit line, or exhibit subline items.

(b) If the "shipped to," "marked for," "shipped from," "PQA," and "acceptance" data are the same for more than one shipment made on the same day under the same contract, one

MIRR shall be prepared to cover all such shipments, except that, if the volume of the shipments precludes the use of a single car, truck, or other vehicle, either a copy of the single MIRR or a separate MIRR shall be provided for each vehicle.

(c) The DD Form 250 may be, but is not required to be, used for imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against indefinite-delivery contracts, or delivery orders placed against blanket purchase agreements, or whenever the purchasing, requisitioning, or ordering document adequately provides for inspection and/or acceptance.

1846.670–5 Forms.

(a) Contractors may obtain from the contracting office upon request, and at no cost, MIRR forms required for use in connection with Government contracts.

(b) Contractors may print forms, provided:

(1) Their format and dimensions (DD Forms 250 and 250c 8½ in. × 11 in.) are identical to the MIRR forms printed by the Government and

(2) The forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border-to-border for the DD Form 250 and 61 lines vertically border-to-border for the DD Form 250c.

1846.671 Procurement quality assurance on shipments between contractors.

(a) The supplier's commercial shipping document/packing list shall indicate performance of required PQA actions at subcontract level. The following entries shall be made on the supplier's commercial shipping document/packing list:

Required PQA of listed items has been performed.

Date: (*Signature of Authorized Government Representative*) (*Typed Name and Office*)

(b) Distribution for Government purposes shall be one copy—

(1) With shipment;

(2) For the Government representative at consignee (via mail); and

(3) For the Government representative at consignor.

1846.672 Preparing DD Forms 250 and 250c.

1846.672–1 Preparation instructions.

DD Form 250, Material Inspection and Receiving Report (MIRR), and DD Form 250c, Material Inspection and Receiving Report—Continuation Sheet, shall be prepared as follows:

(a) *General.* (1) The date, when required, shall utilize seven spaces consisting of the last two digits of the year, three-alpha month abbreviation, and two digits for the day (e.g., 67AUG07, 87SEP24).

(2) The address, when required, shall consist of the name, street address/P.O. box, city, State, and ZIP code.

(3) When the DD Form 250c is used, the data entered in the blocks at the top of the form shall be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with appropriate block cross reference. Additional DD Form 250c sheets solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified information.* Classified information shall not be included in or appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1*—PROC. INSTRUMENT IDEN. (CONTRACT).

(1) Enter the contract number as contained in the contractual document, including any applicable call/order number.

(2) Enter the name of the contracting office immediately below the contract number. This requirement may be satisfied by inclusion of the approved prefix used in the contract number to identify the contracting office.

(d) *Block 2*—SHIPMENT NO.

(1) The shipment number is composed of a three-alpha-character prefix and a four-character numeric or alpha-numeric serial number.

(i) The prefix shall be controlled and assigned by the prime contractor and shall consist of three alpha characters for each "shipped from" address (Block 11).

(ii) The first shipment under a prime contract from each "shipped from" address shall be numbered 0001; all subsequent shipments under that prime contract shall be consecutively numbered.

(A) Alpha-numerics shall be used when more than 9,999 numbers are required. Alpha-numerics shall be serially assigned, with the alpha in the first position, followed by the three-position numeric serial number. The alpha-numeric sequence shall be (the letters I and O shall not be used) A001 through A999 (10,001 through 10,999); B001 through B999 (11,001 through 11,999); to Z999.

(B) When this series is completely used, numbering shall revert to 0001.

(2) The shipment number of the initial shipment shall be reassigned when a "replacement shipment" is involved (see paragraph (r)(2)(iv) of this section).

(3) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a "Z" in addition to that required for line items (see Block 17). If the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect:

(i) To direct the subcontractor to suffix the "Z" or, on receipt of the subcontractor final shipment information,

(ii) To correct the DD Form 250 covering the last shipment from the prime contractor's plant by adding a "Z" to that shipment number.

(e) *Block 3*—DATE SHIPPED. Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of PQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after it. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

(f) *Block 4*—B/L TCN. When applicable, enter—

(1) The commercial or Government bill of lading number after "B/L"; and

(2) The Transportation Control Number after "TCN."

(g) *Block 5*—DISCOUNT TERMS. The discount, in terms of percentages and corresponding days allowed, shall be entered as described below:

(1) The contractor may, at its option, enter the discount terms on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 1846.672-4.

(h) *Block 6*—INVOICE. Enter the invoice number and date as described below:

(1) The contractor may, at its option, enter the invoice number and date on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 1846.672-4.

(i) *Block 7*—PAGE/OF. Consecutively number the pages comprising the MIRR. On each page, enter the total number of pages of the MIRR.

(j) *Block 8*—ACCEPTANCE POINT. Enter an "S" for origin or "D" for destination as specified in the contract as the point of acceptance. Enter an alphabetic "O" for other if the point of acceptance is not specified in the contract.

(k) *Block 9*—PRIME CONTRACTOR. Enter the address.

(l) *Block 10*—ADMINISTERED BY. Enter the address of the contracting office cited in the contract.

(m) *Block 11*—SHIPPED FROM/CODE/FOB.

(1) Enter the code and address of the "shipped from" location. If identical to Block 9, enter "See Block 9."

(2) For performance of services line items that do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations or if identical to Block 9, enter "See Block 9."

(3) Enter on the same line and to the right of "FOB" an "S" for origin or "D" for destination as specified in the contract. Enter an alphabetic "O" if the FOB point cited in the contract is other than origin or destination.

(n) *Block 12*—PAYMENT WILL BE MADE BY. Enter the address of the payment office cited in the contract.

(o) *Block 13*—SHIPPED TO. Enter the address of the consignee as contained in the contract or shipping instructions.

(p) *Block 14*—MARKED FOR. Enter the "mark for" address and/or other designation as contained in the contract or shipping instructions.

(q) *Block 15*—ITEM NO. Enter the contract line, contract subline, exhibit line, or exhibit subline item identification as set forth in the contract. If four or fewer digits are used, position them to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

(r) *Block 16*—STOCK/PART NO./DESCRIPTION.

(1) Enter, as applicable, for each line item, using single spacing between each line item, the following:

(i) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix. When a number is not provided or it is necessary to supplement the number, include other identification, e.g., manufacturer's name or Federal Supply Code, as published in Cataloging Handbook H4-1, and part numbers. Additional part numbers may be shown in parentheses. Also enter the descriptive noun of the item nomenclature and, if provided, the Government-assigned management/material control code. In the case of equal-kind supply items, the first entry shall be the description without regard to kind; e.g., "Resistor" or "Vacuum Tube". Below this description, enter the contract line item number in Block 15 and stock/part number followed by the size or type in Block 16.

(ii) On the next printing line, if required by the contract for control purposes, enter the make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(iii) On the next printing line, enter the FEDSTRIP requisition number(s) when provided in the contract or shipping instructions.

(2) In addition to the entries required above, enter on the next line the following as appropriate (when applicable to all line item numbers identified in the MIRR, enter such data only once, after the last line item entry. Entries may be extended through Block 20):

(i) Enter in capital letters any special handling instructions/limits for material environmental control; e.g., temperature, humidity, aging, freezing, and shock.

(ii) When an FSN is required by, but not cited in, a contract and has not been furnished by the Government, shipment may be made without it at the direction of the contracting officer. Enter the authority for the shipment.

(iii) When Government-furnished property (GFP) is included with or incorporated into the line item, enter "GFP".

(iv) When the shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT" (see subparagraph (s)(3) of this section for replacement indicators.)

(v) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): FSN or comparable identification ______, Quantity ______, Estimated Value ______, Authority ______."

(vi) When shipment is made of components that were short on a prior shipment, enter and complete the following: "These components were listed as shortages on Shipment Number ______, date shipped ______."

(vii) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to ______, Quantity ______, Item ______, Ownership (Government/contractor)."

(viii) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(ix) The MIRR shall be used to record and report the waivers and deviations from contract specifications, including the source and authority for the waiver or deviation (e.g., the contracting office authorizing the waiver or deviation and the identification of the authorizing document).

(x) For shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-inch outline-type letters.

(xi) When test/evaluation results are a condition of acceptance and are not available before shipment, the following note shall be entered if the shipment is approved by the contracting officer:

NOTE: Acceptance and payment are contingent upon receipt of approved test/evaluation results.

The contracting officer shall advise (A) the consignee of the results (approval/disapproval) and (B) the contractor to withhold invoicing pending attachment to its invoice of the approved test/evaluation results.

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or Alternative Release Procedure (ARP) origin acceptance (additional copy furnished to the Quality Assurance Representative (QAR)) shall be identified by entering "PAYMENT COPY" approximately one-half-inch outline-type letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter-inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) *Block 17*—QUANTITY SHIP/REC'D.

(1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a "Z" below the first digit of the quantity when—

(i) The total quantity of the line item is delivered, including variations within contract terms; and

(ii) All shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter "A" to designate first replacement, "B" for second replacement, and so forth. The final shipment indicator "Z" shall not be used when a final line item shipment is replaced.

(t) *Block 18*—UNIT. Enter the abbreviation of the unit of measure indicated in the contract for payment. When a second unit of measure is indicated in the contract for purposes other than payment or is used for shipping purposes, enter the abbreviation of the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129, Marketing and Storage.

(u) *Block 19*—UNIT PRICE. Enter the unit price on all NASA copies whenever the MIRR is used for voucher or receiving purposes.

(v) *Block 20*—AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

(w) *Block 21*—PROCUREMENT QUALITY ASSURANCE. The words "conform to contract" contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with appropriate block cross reference.

(1) "A. ORIGIN."

(i) The authorized Government representative shall—

(A) Place an "X" when applicable in the appropriate PQA and/or acceptance box(es) to evidence origin PQA and/or acceptance (when the contract requires PQA at destination in addition to origin PQA, an asterisk shall be entered at the end of the statement and an explanatory note in Block 16);

(B) Enter the date of signature;

(C) Sign; and

(D) Enter the typed, stamped, or printed name of the signer and office code.

(2) "B. DESTINATION."

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When PQA and acceptance or acceptance is at destination, the authorized Government representative shall—

(A) Place an "X" in the appropriate box(es);

(B) Enter the date of signature;

(C) Sign; and

(D) Enter typed, stamped, or printed name and title.

(x) *Block 22*—RECEIVER'S USE. This block shall be used by the receiving activity (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived; when off-loading or inchecking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(y) Block 23—CONTRACTOR USE ONLY. This block is provided and reserved for contractor use.

1846.672-2 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of PQA or acceptance prior to the time of actual shipment (see Block 3).

1846.672-3 Correction instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block. If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) The words "CORRECTIONS HAVE BEEN VERIFIED" shall be entered on page 1. The authorized Government representative shall date and sign immediately below the statement.

(c) MIRR's shall not be corrected for Block 19 and 20 entries.

(d) Pages of the MIRR requiring correction shall be clearly marked "CORRECTED COPY", avoiding obliteration of any other entries. Even though corrections are made on continuation sheets only, page 1 shall also be marked "CORRECTED COPY".

(e) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

1846.672-4 Invoice instructions.

Contractors are encouraged to use copies of the MIRR as an invoice in lieu of a commercial form, but are not required to do so. When the MIRR is used as an invoice, four copies shall be prepared and forwarded to the payment office as follows:

(a) Complete Blocks 5, 6, 19, and 20.

(b) Mark, in letters approximately one inch high, the first copy "ORIGINAL INVOICE" and the remaining three copies "INVOICE COPY".

(c) Forward the four copies to the payment office (Block 12 address).

1846.672-5 Packing-list instructions.

Copies of the MIRR may be used as a packing list. If so, the packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked "PACKING LIST".

1846.672-6 Receiving instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If PQA and acceptance or acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

1846.673 Distribution of DD Forms 250 and 250c.

(a) DD Forms 250 and 250c shall be distributed in accordance with the procedures prescribed by the installation.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the contract or instructions of the contracting officer.

1846.674 Contract clause.

The contracting officer shall insert the clause at 1852.246-72, Material Inspection and Receiving Report, in solicitations and contracts, except those using small purchase procedures or where the only deliverable items are technical or scientific reports. Insert the number of copies to be prepared.

Paragraph (a) may be changed to specify advance copies or separate distribution of the DD Form 250.

Subpart 1846.7—Warranties

1846.703 Criteria for use of warranties.

1846.703-70 Additional criteria.

In deciding whether to use a warranty clause, at least the following factors shall be considered in addition to those at FAR 46.703:

(a) Cost of correction or replacement, either by the contractor or by another source, in the absence of a warranty.

(b) Operation of the warranty as a deterrent against the furnishing of defective or nonconforming supplies.

(c) Whether the contractor's present quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective and reliable quality program.

(d) Reliance on "brand-name" integrity.

(e) Whether a warranty is regularly given for a commercial component of a more complex end item.

1846.704 Authority for use of warranties.

(a) A warranty clause shall be used when it is found to be in the best interests of the Government, after an analysis of the factors listed in 1846.703-70 and FAR 46.703.

(b) Except for the warranty clause for commercial items covered in FAR 46.709 and FAR 46.710(a)(2), and warranties contained in Federal, military, or construction specifications, the decision to use a warranty clause or to include a warranty provision in a specification other than a Federal, military, or construction specification shall be made only upon the written authorization of the procurement officer or a designee. This decision may be made either for individual procurements or for classes of procurements.

(c) Warranties required by applicable architect-engineer specifications shall be included in construction contracts.

1846.709 Warranties of commercial items.

1846.709-70 Limitation.

In procurements involving a commercial item of supply or service or construction, the contracting officer may include in the solicitation and contract a warranty clause that is standard or customary in the trade, or that is substantially similar to and not in excess of a standard or customary trade warranty, but only if the contracting officer, after reviewing the factors listed in 1846.703-70 and FAR 46.703, decides that inclusion of such a clause is in the Government's best interest.

1846.770 Administration.

When the contracting officer is notified of a defect in warranted items, the contracting officer should ascertain whether the warranty is currently in effect and ensure that the contractor is given proper and timely notice of the defect.

PART 1847—TRANSPORTATION

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

Sec.

1847.200 Scope of subpart.
1847.200-70 Charter of aircraft.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.
1847.304-3 Shipments from CONUS for overseas delivery.
1847.304-370 NASA export privilege.
1847.305 Solicitation provisions, contract clauses, and transportation factors.
1847.305-10 Packing, marking, and consignment instructions.
1847.305-13 Transit arrangements.
1847.305-70 NASA contract clauses.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.
1847.506-70 Compliance with the Cargo Preference Act.
1847.507 Contract clauses.

Subpart 1847.70— Protection of the Florida Manatee

1847.7001 Contract clause.

AUTHORITY: 42 U.S.C. 2473 (c)(1).

SOURCE: 54 FR 28334, July 5, 1989, unless otherwise noted.

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

1847.200 Scope of subpart.

1847.200-70 Charter of aircraft.

When procuring aircraft by charter, contracting officers shall comply with NMI 7910.1, NASA Aircraft Management.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.

1847.304-3 Shipments from CONUS for overseas delivery.

1847.304-370 NASA export privilege.

NASA has certain export licensing privileges for moving commodities to foreign destinations. Advice should be obtained from the transportation officer in order to make full use of these privileges.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305-10 Packing, marking, and consignment instructions.

In contracts providing for delivery f.o.b. origin and shipment under Government bills of lading, consignment instructions may be limited to the mail address of the consignee (receiving activity), provided the contract instructions state: "Shipment other than mail shall be consigned as indicated on the Government bill of lading furnished to the contractor." Various receiving activities may have different consignment points for the various transportation media or for particular carriers within a medium, depending on the weight, shape, size, or nature of the shipment involved.

1847.305-13 Transit arrangements.

(a) When the provision at FAR 52.247-56 is used, the solicitation shall state that offers will be evaluated on the basis of the lowest overall cost to the Government, including transportation costs to NASA from point of origin to final destination, taking into account any applicable transit privileges.

(b) If the nature of the procurement is such that carload or truckload shipments might be made by the contractor from one point (such as a subcontractor's plant) to another for processing or fabrication and delivery to the Government, solicitations shall require the contractor to furnish information that will enable the Government to benefit from any transit privilege that might apply in shipment to final destination.

1847.305-70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.247-70, Returnable Containers, in contracts involving the purchase of gas or other supplies in contractor-furnished returnable, reusable containers, if the contractor retains title to the containers.

(b) The contracting officer may insert a clause substantially as stated at 1852.247-72, Advance Notice of Shipment, in solicitations and contracts when the f.o.b point is destination and special Government assistance is required in the delivery or receipt of the items. Insert the number of work days prior to shipment that advance notice is required, the items to be shipped, and the individual(s) to receive notification.

(c) The contracting officer may insert a clause substantially as stated at 1852.247-73, Shipment by Government Bills of Lading, in f.o.b. origin solicitations and contracts. Insert the name, title, mailing address, and telephone number of the designated transportation officer or other official delegated responsibility for GBLs.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.

1847.506-70 Compliance with the Cargo Preference Act.

(a) The transportation officer in each field installation shall establish and maintain a register to reflect adherence to the Cargo Preference Act. The register shall contain data related to shipments made by the installation and by NASA contractors. Where no transportation officer is available, it shall be maintained by the contracting office. The register shall contain pertinent details of ocean shipments, including, but not limited to, the ports of origin and destination of shipments, commodity descriptions, and gross weight, freight revenue, name of vessel, operator of vessel, and date of loading. The register shall be maintained current and organized so that adherence to the Cargo Preference Act can be ascertained at all times. Insofar as is practicable, compliance with the 50-percent minimum requirements of the Cargo Preference Act shall be maintained on a quarter-year basis; any deficiencies in maintaining compliance shall be corrected by the end of the calendar year.

(b) On the basis of the registers maintained under paragraph (a) of this section, quarterly reports reflecting ocean shipments shall be submitted to the Division of National Cargo, Office of Market Development, Maritime Administration, Department of Transportation, Washington, DC, 20590 (see FAR 47.506(d)). Negative reports are required when applicable. Reports shall be made by the transportation officers and contracting officers responsible for maintaining the registers.

1847.507 Contract clauses.

The clause at FAR 52.247-64 shall be used as prescribed in FAR 47.507. When it is used, it shall be used with the appropriate alternate.

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

The contracting officer shall insert the clause at 1852.247-71, Protection of the Florida Manatee, in solicitations and contracts when deliveries or vessel operations, dockside work, or disassembly functions under the contract will involve use of waterways inhabited by manatees (endangered marine mammals). The clause shall be included also in applicable subcontracts (including vendor deliveries).

PART 1848—VALUE ENGINEERING

Subpart 1848.1—Policies and Procedures

Sec.

1848.102 Policies.
1848.103 Processing value engineering change proposals.
1848.104 Sharing arrangements.
1848-104-2 Sharing collateral savings.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts.
1848.201-70 NASA conditions.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28335, July 5, 1989, unless otherwise noted.

Subpart 1848.1—Policies and Procedures

1848.102 Policies.

(a) The exemptions permitted under FAR 48.102(a) are granted on a case-by-case basis, or for specific classes of contracts, by the Assistant Administrator for Procurement.

(b) Profit or fee shall be excluded when calculating instant or future contract savings, except that in calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

(c) The FAR requires agencies to establish procedures for funding and payment of the contractor's share of collateral savings and future contract savings. Therefore, the contracting officer shall notify the responsible technical official of the potential for awarding the contractor future or collateral savings if the submitted value engineering change proposal (VECP) is accepted. (See 1848.103.) Upon acceptance, the contracting officer shall obtain the concurrence of the program office and amend the instant contract to reflect payment of future or collateral savings.

1848.103 Processing value engineering change proposals.

Upon receipt of a VECP, the contracting officer shall promptly forward it to the technical officer responsible for the contract, indicating—

(a) The date the VECP was received;

(b) The date by which the contractor must be informed of the Government's acceptance or rejection of the VECP unless additional time is required for evaluation;

(c) The date by which the contracting officer must know of the technical officer's decision in order to timely accept or reject the VECP;

(d) The need for information required to inform the contractor if the VECP is to be rejected or if additional time is needed for evaluating the VECP;

(e) The potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted;

(f) That if the VECP is accepted, precise information will be needed with regard to the type of savings, Government costs, etc., that can be expected from its acceptance;

(g) The need for a procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part; and

(h) The need for additional funds if acceptance of the VECP results in negative instant contract savings.

1848.104 Sharing arrangements.

1848.104-2 Sharing collateral savings.

The contracting officer may make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts.

1848.201-70 NASA conditions.

(a) *General.* The Assistant Administrator for Procurement may exempt a contract or a class of contracts from the requirements of FAR Part 48.

(b) *Value engineering incentive.* Unless the chief of the contracting activity authorizes its inclusion, the contracting officer shall not include the VE incentive clause in solicitations and contracts that fall under the exemptions at FAR 48.201(a) (1) through (5). With respect to the sixth exception (FAR 48.201(a)(6)), the procurement officer may not authorize inclusion of a VE clause in a contract or class of contracts exempted by the Assistant Administrator for Procurement.

(c) *Value engineering program requirement.* NASA contracting officers shall insert the VE program requirement clause (the clause at FAR 52.248-1 used with its Alternate I or II) in (1) initial production contracts for major systems and (2) major systems R&D contracts for full-scale development, unless the contracting officer determines that its use is inappropriate and documents the file to reflect that determination. The VE program requirement clause (FAR 52.248-1, Value Engineering, used with its Alternate I or II) is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that, in the contracting officer's judgment, lend themselves to VE.

(d) *Research and development.* The contracting officer may not insert either the VE incentive clause (FAR 52.248-1, Value Engineering) or the VE program requirement clause (FAR 52.248-1, Value Engineering, used with its Alternate I or II) in an R&D contract where the statement of work is essentially an incorporation by reference of the prospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might profit from or be improved by application of VE techniques, the contracting officer shall consider inserting the VE incentive clause (FAR 52.248-1, Value Engineering) or VE program requirement clause (FAR 52.248-1, Value Engineering, used with its Alternate I or II), to refer to that part.

PART 1849—TERMINATION OF CONTRACTS

Subpart 1849.1—General Principles

Sec.

1849.101 Authorities and responsibilities.
1849.101-70 Appointment/delegation.
1849.101-71 Termination authority.
1849.102 Notice of termination.
1849.102-70 Prior clearance of significant contract terminations.
1849.105 Duties of termination contracting officer after issuance of notice of termination.
1849.105-70 Termination docket checklist.
1849.110 Negotiation memorandum.
1849.111 Review of proposed settlements.
1849.111-70 Settlement Review Boards.
1849.111-71 Required review and approval.
1849.111-72 Scope of review.
1849.111-73 Action by the Board.
1849.111-74 Subcontracts.

Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clauses.
1849.505-70 NASA contract clause.

Subpart 1849.6—Contract Termination Forms and Formats

1849.603 Formats for termination for convenience settlement agreements.
1849.603-70 Termination Contracting Officer's Settlement Memorandum.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28336, July 5, 1989, unless otherwise noted.

Subpart 1849.1—General Principles

1849.101 Authorities and responsibilities.

1849.101-70 Appointment/delegation.

(a) Heads of installations shall appoint a termination contracting officer (TCO) (see FAR 2.101) to perform specific duties relating to contract termination as one of that individual's primary functions. Such duties should include—

(1) Receiving and reviewing NASA Forms 1412, Termination Authority;

(2) Reviewing the contract and related documents before issuing the notice of termination, to ensure protection of the Government's rights under the contract;

(3) Issuing notices of termination, reinstatement, and recession to contractors;

(4) Assigning termination docket control numbers;

(5) Developing, maintaining, and managing basic controls relating to contract termination and settlement actions; and

(6) Carrying out the duties, functions, and responsibilities described in FAR part 49 and this part 1849.

(b) Contracting offices shall utilize the services of the Department of Defense and other Government agencies whenever possible to administer and negotiate settlement of terminated contracts. Delegation of the termination function shall be made in accordance with FAR subpart 42.2 and subpart 1842.2 of this Regulation.

1849.101-71 Termination authority.

NASA Form 1412, Termination Authority, is prescribed for use by NASA installations when initiating action to terminate a contract for convenience or default. The project manager or the activity initiating the procurement request should initiate the action by completing NASA Form 1412 and submitting it to the contracting officer.

1849.102 Notice of termination.

1849.102-70 Prior clearance of significant contract terminations.

(a) Before any notice or information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor, prior NASA Headquarters clearance of the information release is required; release of information to Congress or the public is the responsibility of NASA Headquarters through its liaison point designated in paragraph (b) of this section. In a labor surplus area, a reduction of fewer than 100 may be significant and, if so, should be similarly cleared.

(b) The contracting officer shall submit the following information to the Office of External Relations, NASA Headquarters (Code X):

(1) Contract number.

(2) Date of award.

(3) Type of contract.

(4) Name of company.

(5) Nature of contract or end item.

(6) Reasons for the termination.

(7) Contract price of items terminated.

(8) Total number of contractor employees involved, including the Government's estimate of the number that may be discharged.

(9) Anticipated impact on the company and the community.

(10) Name of the community affected.

(11) Area labor category.

(12) Whether contractor is large or small business.

(13) Any known impact on disadvantaged employment programs.

(14) Total number of subcontractors involved and the impact in this area, if known.

(15) Unclassified draft of suggested press release.

(c) After the decision has been made to terminate a contract, the contracting officer shall immediately request clearance to release the information. Pending receipt of the clearance, "For Official Use Only" handling shall be used unless classified information is involved. The contracting officer shall furnish copies of the request to the Office of External Relations (Code X), and the cognizant program office.

(d) The Office of External Relations (Code X) shall act promptly on the request (not days after receipt) to avoid the accrual of termination costs.

1849.105 Duties of termination contracting officer after issuance of notice of termination.

1849.105-70 Termination docket checklist.

The termination contracting officer shall complete NASA Form 1413, Termination Docket Checklist, to ensure adequacy of records under FAR 49.105.

1849.110 Negotiation memorandum.

Formats for negotiation memoranda for settlements requiring Settlement Review Board action appear in 1849.603-70.

1849.111 Review of proposed settlements.

1849.111-70 Settlement Review Boards.

Procurement officers at each NASA installation shall establish a Settlement Review Board (the Board) to review proposed settlements or determinations as required by 1849.111-71(a). Each Board should be composed of at least three qualified employees of the installation with broad business and contracting experience. Each Board should include a lawyer, an engineer or industrial specialist, and, in appropriate cases, an accountant. Three members of the Board shall constitute a quorum; the Board may act by a majority of the members present. No person may serve as a member of a Board in reviewing a settlement in which that member has participated.

1849.111-71 Required review and approval.

(a) *When required.* Before executing a settlement agreement, issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the TCO shall submit it for review and approval by the Board if—

(1) It involves $50,000 or more (see FAR 49.002(d));

(2) It is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and:

(i) In the case of a complete termination, the fee, as adjusted, is $50,000 or more, or

(ii) In the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more;

(3) The procurement officer concerned determines that a review is desirable; or

(4) The TCO desires review by the Board.

(b) *Submission of information.* The TCO shall submit to the Board the Termination Settlement Supplemental Agreement and supporting documentation. The documentation should include copies of:

(1) The contractor's or subcontractor's settlement proposal,

(2) The audit report,

(3) Termination inventory schedules,

(4) Consolidated SF 1424, Inventory Disposal Report,

(5) The TCO's negotiation memorandum explaining the settlement (see FAR 49.110), and

(6) The opinion of any other Board that previously reviewed the settlement.

The Board will prescribe the number of copies and may require the submission of additional information.

1849.111-72 Scope of review.

The function of the Board is to judge the reasonableness of the proposed settlement agreement or determination. The Board may vary the scope and intensity of its review as circumstances warrant. While it is not intended that the Board examine in detail every element of the proposed settlement agreement or determination, the Board may review some elements to assure its overall reasonableness.

1849.111-73 Action by the board.

The Board shall submit to the TCO a written opinion approving or disapproving the proposed settlement agreement or determination. Failure of the Board to submit a written opinion within 30 days after submission to the Board of all the information required under 1849.111-71(b) shall operate as an approval.

1849.111-74 Subcontracts.

A TCO may authorize the contract administration office cognizant of an upper-tier subcontractor to grant approval or ratification, including necessary Board approvals, of proposed subcontractor settlements described in FAR 49.108-3(c), that are first reviewed and referred by the prime contractor to the TCO. This procedure may be used only for specified contracts and is not applicable to settlements between the contractor and its immediate subcontractors.

Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clauses.

1849.505-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.249-72, Termination (Utilities), in all solicitations and contracts for utilities services.

Subpart 1849.6—Contract Termination Forms and Formats

1849.603 Formats for termination for convenience settlement agreements.

Termination contracting officers (TCOs) must use the format shown in 1849.603-70 for the settlement memorandum (see FAR 49.110). Contractors and subcontractors are encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

1849.603-70 Termination contracting officer's settlement memorandum.

(a) *General information.* The TCO shall include the following information regarding the contractor, contract, and termination notice:

(1) *Identification.* TCOs shall identify the purpose and content of the memorandum.

(i) The TCO shall give the name and address of the contractor and discuss any pertinent affiliation between prime contractors and subcontractors relative to the overall settlement.

(ii) The TCO shall list the names and titles of contractor and Government personnel who participated in the negotiation.

(2) *Description of terminated contract.* The TCO shall state the—

(i) Date of contract;

(ii) Contract number;

(iii) Type of contract;

(iv) General description of contract items;

(v) Total contract price; and

(vi) Applicable contract termination provisions and clause.

(3) *Termination notice.* The TCO shall reference the termination notice and state—

(i) The effective date of termination;

(ii) The scope and nature of termination (complete or partial);

(iii) The items terminated;

(iv) The unit prices;

(v) The total price of items terminated for fixed-price contracts or the estimated cost and fee applicable to items terminated for cost-reimbursement type contracts;

(vi) Whether the termination notice was amended and, if so, why;

(vii) Whether the contractor stopped work on the termination effective date (if it did not, furnish details) and whether subcontracts were terminated promptly;

(viii) Any redirection of common items and return of goods to the contractor's suppliers; and

(ix) The extent of contract performance and timely deliveries by the contractor.

(b) *Contractor's settlement proposal.* The TCO shall summarize the contractor's settlement proposal. The summary shall include the following:

(1) *Date and amount.* The TCO shall identify the date and location where the claim was filed and its gross amount (if interim settlement proposals were filed, information shall be furnished for each claim).

(2) *Basis of claim.* The TCO shall identify the basis of the claim, e.g., inventory, total cost, or other basis. The TCO shall explain any approvals granted in connection with submission on other than an inventory basis.

(3) *Examination of proposal.* The TCO shall identify the types of reviews made and by whom (audit, engineering, legal, or other).

(c) *Tabular summary of contractor's claim.* The TCO shall summarize the proposed settlement in tabular form. The summary shall include the cost elements/items, the amounts claimed, the Government recommended position (including auditor and technical personnel recommendations), and the negotiated settlement amounts. This summary shall include, if appropriate, the previous reimbursed and unreimbursed costs applicable to the prime contractor and subcontractor, previous profit/fees paid and unpaid; settlement cost less disposal credit or other credits, and a recapitulation of previous settlements. The TCO shall expand the format to include field recommendations that will be considered.

(d) *Settlement summary.* The TCO shall address the settlements reached on the items in paragraphs (d) (1) through (14) of this section:

(1) *Contractor's cost.* (i) If the settlement was negotiated on the basis of individual items, the TCO shall specify the factors and the consideration given with respect to each item.

(ii) If the auditor's final report was not available for consideration, the TCO shall state the circumstances.

(iii) The TCO shall elucidate the tabular summaries with comment.

(iv) In the case of a lump sum settlement, the TCO shall discuss the basis for each element of cost and profit/fee.

(v) The TCO shall explain any unusual items of cost.

(vi) The TCO shall discuss any important adjustments made to costs claimed or any significant amounts in relation to the total claim.

(vii) If a partial termination is involved, the TCO shall state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

(viii) The TCO shall discuss any unadjusted contractual changes included in the settlement.

(ix) The TCO shall discuss whether or not a loss would have been incurred and explain any adjustment made for the loss.

(x) The TCO shall furnish other information explaining the recommended settlement to the Settlement Review Board or any other reviewing authority.

(2) *Profit/Fee.* (i) The TCO shall explain the basis and factors considered in arriving at an equitable profit under a fixed-price contract.

(ii) The TCO shall explain the adjustments to the fixed fee, identify the basis used (such as percentage of completion), and describe the factors considered in arriving at an equitable fee under a cost-reimbursement type contract. The TCO shall include any tabular summaries or breakdowns deemed helpful to an understanding of the process.

(3) *Settlement expenses.* The TCO shall discuss and summarize those expenses not included in the audit.

(4) *Subcontractor settlements.* The TCO shall identify the number and dollar amount of any settlements approved by the TCO and concluded by the contractor under delegation of authority.

(5) *Partial payments.* The TCO shall furnish the total amount of any partial payments.

(6) *Progress or advance payments.* The TCO shall furnish the total of unliquidated progress or advance payments.

(7) *Claims of the Government against the contractor included in settlement agreement reservations.* The TCO shall list any outstanding claims the Government has against the contractor regarding the terminated contract.

(8) *Assignments.* The TCO shall list any assignments, identifying the name and address of each assignee.

(9) *Disposal credits.* The TCO shall furnish information as to any applicable disposal credits and quantify them.

(10) *Plant clearance.* The TCO shall state whether all plant clearance actions have been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. The TCO shall discuss any unusual matters pertaining to plant clearance. The TCO shall attach a consolidated closing plant clearance report, if applicable.

(11) *Government property.* The TCO shall state whether all Government property has been accounted for.

(12) *Special tooling.* The TCO shall discuss the disposition of any special tooling, if applicable.

(13) *Summary of settlement.* The TCO shall summarize the complete or partial settlement in tabular form. The summary shall include, at a minimum, the amount claimed and allowed for contractor and/or subcontractor changes, disposal, prior payment credits, and contract price.

(14) *Exclusions.* The TCO shall describe any proposed reservation of rights to the Government or to the contractor.

(e) *Recommendation.* The TCO shall state:

(1) The amount of the gross settlement recommended and

(2) That it is fair and reasonable to the Government and the contractor.

(f) *Signature.* The TCO shall sign and date the memorandum.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

Sec.

1850.202 Contract adjustment boards.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.
1850.305-70 Submission of request to the Contract Adjustment Board.
1850.306 Disposition.
1850.306-70 Implementation of the Contract Adjustment Board's decision.

Subpart 1850.4—Residual Powers

1850.402 General.
1850.403 Special procedures for unusually hazardous or nuclear risks.
1850.403-1 Indemnification requests.
1850.403-2 Action on indemnification requests.
1850.403-3 Contract clause.
1850.403-370 NASA contract clauses.
1850.403-70 Reporting and records requirements.
1850.470 Lead NASA installation.

AUTHORITY: 42 U.S.C. 2473 (c)(1).

SOURCE: 54 FR 28338, July 5, 1989, unless otherwise noted.

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

1850.202 Contract adjustment boards.

NMI 1152.5, Contract Adjustment Board, establishes the Contract Adjustment Board as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.

1850.305-70 Submission of request to the Contract Adjustment Board.

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Chairman, Contract Adjustment Board (CAB), NASA Headquarters (Code GG), including in the forwarding letter—

(1) The nature of the case;

(2) The disposition recommended for the request; and,

(3) If contractual action is recommended, the contracting officer's opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts and issues relevant to the request. The forwarding letter and all enclosures shall be submitted in duplicate. Any classified information in the material forwarded shall be so identified. The CAB, acting through its Counsel, may further investigate the facts and issues involved to obtain from the contractor, the contracting officer, or others any additional facts and evidence, necessary to make a determination on the contractor's entitlement to the relief requested or to other equitable relief.

1850.306 Disposition.

1850.306-70 Implementation of the Contract Adjustment Board's decision.

(a) Copies of the CAB's decision shall be transmitted to the contracting officer, who shall take such action as is authorized by the decision. If the CAB's decision is to reject the contractor's request for relief, the contracting officer shall advise the contractor of that decision.

(b) Except as provided in paragraph (c) of this section, immediately upon execution of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward two copies of the contractual document to the CAB Chairman, marked for the attention of the Counsel, for retention with the CAB's permanent files.

(c) Contracts or contract modifications or amendments for which NASA Headquarters approval is otherwise required under the FAR or this Regulation shall be forwarded for that approval. After approval has been received, the contracting officer shall comply with paragraph (b) of this section.

Subpart 1850.4—Residual Powers

1850.402 General.

(a) The document that grants authority for use of indemnification in NASA is a "Memorandum of Decision Under Public Law 85-804" which must be signed by the Administrator. It defines the unusually hazardous risks and specifies the terms that must be met by an application to allow granting of indemnification to a requestor. Approval of requests to exercise the authority granted by this Decision shall be in the form of an "Approval Under Public Law 85-804" which shall be signed by the Administrator. Should a circumstance arise where a contractor's request is beyond the scope of any current Decision, but indemnification is appropriate, a combined "Memorandum of Decision and Approval Under Public Law 85-804" may be used which shall be signed by the Administrator.

(b) The Assistant Administrator for Procurement (Code HS) is the responsible office for (1) the development and maintenance of the decision document(s) and (2) assuring that approval document(s) prepared by contracting officers are in compliance with the scope of the relevant decision, applicable regulation and policy. These documents shall be concurred in by the General Counsel, Comptroller, Assistant Administrator for Procurement, Associate Deputy Administrator and Deputy Administrator, as appropriate, before presentation to the Administrator.

[54 FR 39374, Sept. 26, 1989]

1850.403 Special procedures for unusually hazardous or nuclear risks.

1850.403-1 Indemnification requests.

In addition to the information required by FAR 50.403-1(a), the contractor's request for indemnification shall include a copy of the relevant third-party comprehensive liability policies and products liability policies or the equivalent.

1850.403-2 Action on indemnification requests.

When a contracting officer concludes that a request under FAR 50.403-1 is appropriate for approval by the Administrator, the contracting officer shall complete the actions under FAR 50.403-2(a). The contracting officer's findings, analysis and the recommended "Approval Under Public Law 85-804" shall be forwarded to the Assistant Administrator for Procurement (Code HS) for review and final processing through appropriate channels to the Administrator. Code HS shall seek the necessary concurrences and present the applicable document(s) to the Administrator.

[54 FR 39375, Sept. 26, 1989]

1850.403-3 Contract clause.

1850.403-370 NASA contract clauses.

(a) To indemnify the contractor against unusually hazardous or nuclear risks, the contracting officer shall, when authorized in accordance with FAR subpart 50.4 and this subpart 1850.4, insert the clause at 1852.250-70, Indemnification Under Public Law 85-804—NASA Contracts, in fixed-price contracts, in lieu of the clause prescribed at FAR 50.403-3. If the contract is a costreimbursement contract, the contracting officer shall use the basic clause at 1852.250-70 with its Alternate I.

(b) The contracting officer shall insert the clause at 1852.250-72, Space Activity—Unusually Hazardous Risks, in all contracts containing the appropriate clause version at 1852.250-70 unless the Administrator approves a different definition of unusually hazardous risks to be used in a particular contract.

[54 FR 39375, Sept. 26, 1989]

1850.403-70 Reporting and records requirements.

(a) Concurrent with including indemnification provisions in any NASA prime contract pursuant to the authority of an indemnification granted in the "Approval Under Public Law 85-804" by the Administrator, the contracting officer shall submit a report directly to the Contract Adjustment Board that —

(1) References and provides two copies of the Administrator's "Approval Under Public Law 85-804";

(2) Provides two copies of any clause deviations from the clauses prescribed at 1850.403-370;

(3) Provides the contract number and date of award;

(4) If applicable, provides the contract modification number and date; and

(5) Complies with the reporting requirements of Public Law 85-804, 50 U.S.C. 1434, and Executive Order 10789, which currently states—

> With respect to actions which involve actual or potential cost to the United States in excess of $50,000 the report shall * * *
>
> (1) name the contractor;
>
> (2) state the actual cost or estimated potential cost involved;
>
> (3) describe the property or service involved; and
>
> (4) state further the circumstances justifying the action taken.

(b) The Contract Adjustment Board shall maintain two copies of each "Approval Under Pub. L. 85-804" required by FAR 50.403-2(b); two copies of the applicable "Memorandum of Decision Under Pub. L. 85-804"; and, for a period deemed appropriate by the Board, one copy of each report submitted by contracting officers.

[54 FR 39375, Sept. 26, 1989]

1850.470 Lead NASA installation.

(a) Contractors applying for indemnification shall be responsible for initially determining which NASA installation has the most significant amount of the contractor's procurement contracts, measured by either dollars or numbers, related to NASA space activities rather than to total NASA business. The indemnification request should be submitted to the procurement officer for that installation, who will then designate a cognizant contracting officer. This determination should be done at the contractor's highest level necessary to prevent duplicate requests from associate divisions, subsidiaries, or central offices of the contractor. NASA reserves the right to reassign a lead installation for purposes of processing indemnification requests made under this Regulation.

(b) Relying on the contractor's submission, the receiving contracting officer shall process the request using the procedures in FAR subpart 50.4 and this subpart 1850.4. The receiving installation will become the lead installation and will remain so indefinitely. Lead installation designation may change to another installation if the losing and gaining procurement officers agree to the change. For example, a new award may so substantially alter the focus of a contractor's procurement contracts related to space activities toward a different installation that a change may be appropriate. Should a change occur in the lead installation, all records related to indemnification of that contractor shall be transferred to the gaining installation.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.1—Contractor Use of Government Supply Sources

Sec.
1851.101 Policy.
1851.102 Authorization to use Government supply sources.
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1851.103 Ordering from Government supply sources.
1851.104 Furnishing assistance to contractors.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28339, July 5, 1989, unless otherwise noted.

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.101 Policy.

(a) NASA installations shall establish internal control over contractor use of GSA and other Federal supply sources.

(b) Use of official Government mailing privileges by NASA contractors is covered in NMI 1450.11, NASA Mail Management Program.

1851.102 Authorization to use Government supply sources.

(a) In addition to considering the requirements of FAR 51.102(a), the contracting officer shall consider the potential for abuse by contractors authorized access to Government supply sources.

(b) The contracting officer shall forward letters of authorization to the installation's Supply and Equipment Management Officer, Attention: Activity Address Code Coordinator, who will forward them to the Supply and Equipment Management Division, NASA Headquarters (Code NIE), for verification and transmittal to GSA. Letters of authorization forwarded to Headquarters must be accompanied by the supporting determination and findings, which will not be forwarded to GSA.

(c) Substantially the following format shall be used for letters authorizing contractor use of Government supply sources:

Subject: Authorization to Lease, Rent, or Purchase from General Services Administration (GSA) Supply Sources

(Contractor's name) ________________

(Address) ________________

(1) You are hereby authorized to act for the Government in the following matters:

(i) The acquisition of supplies and/or services under Contract No. ________ available for purchase by Government agencies either directly from GSA stock or under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth in this authorization.

(ii) The leasing or rental of equipment for use on Contract No. ________ available for lease or rental by Government agencies under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth in this authorization.

(iii) The issuance of tax exemption certificates in lieu of the payment of State or other taxes for which the Government is not liable on supplies or services purchased under this authorization.

(2) (i) Purchase orders under GSA schedules and contracts shall be placed in accordance with the terms and conditions of the GSA schedule or contract and this authorization. A copy of this authorization shall be attached to the order (unless a copy was

previously furnished to the GSA contractor) and shall contain the following statement:

> This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. ______, pursuant to written authorization dated ______, a copy of which (is attached) (you have on file). In the event of any inconsistency between the terms and conditions of this order and those of the applicable GSA schedule/contract, the latter will govern.

(ii) Orders for items in the GSA Supply Catalog shall be placed in accordance with the Catalog and this authorization and shall include the address to which billings are to be sent. Bills are not issued by GSA until after shipment has been made and should therefore be paid promptly. Any necessary adjustments will be made by GSA subsequent to payment. All orders shall contain the following statement:

> This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. ______, pursuant to written authorization dated ______, a copy of which (is attached) (you have on file).

(3) (Insert any other provisions and restrictions.)

(4) The authority hereby granted is not transferable or assignable.

____

(Contracting Officer)

(d) When requisitioning from the Department of Veterans Affairs, the contractor should use FEDSTRIP or MILSTRIP, as appropriate, Optional Form 347, or an installation-prescribed form.

1851.102-70 Contractor acquisition of filing cabinets.

(a) Before ordering filing cabinets whose title will vest in the Government, NASA contractors shall—

(1) Transfer inactive records to contractor storage areas;

(2) Dispose of unnecessary records in accordance with corporate procedures;

(3) Use less expensive shelf filing methods;

(4) Take other actions to reduce the need for filing cabinets; and

(5) Furnish a statement to the cognizant contracting officer that, although the steps outlined in paragraphs (a)(1) through (4) of this section have been taken, sufficient additional filing capacity has not been produced.

(b) The contractor shall then submit its request to the contracting officer, who shall:

(1) Confer with the Records Management Officer, the Property and Supply Officer, and the project officer and, if appropriate,

(2) Certify on all letter requests that the prerequisite actions have been taken by the contractor and that they have not produced the required filing space.

(c) If the need for filing cabinets is approved by the contracting officer, excess items of the type requested shall be furnished, if available, through appropriate property accountability channels.

(d) Approved requests that cannot be filled from excess shall be returned to the contractor with an authorization to obtain file cabinets, preferably through GSA.

1851.103 Ordering from Government supply sources.

(a) All orders for GSA stock shall contain the statement in subparagraph (c)(2)(ii) of the authorization format set forth in 1851.102.

(b) Contracting officers shall use NMI 4050.2, Assignment and Maintenance of FEDSTRIP and MILSTRIP Activity Address Codes, to obtain FEDSTRIP/MILSTRIP activity codes.

1851.104 Furnishing assistance to contractors.

When necessary, NASA personnel shall assist the contractor in preparing and submitting the initial FEDSTRIP or MILSTRIP requisitions, the Optional Form 347, or installation-prescribed forms.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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1852.250-72 Space Activity—Unusually Hazardous Risks.
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AUTHORITY: 42 U.S.C. 2473 (c)(1).

SOURCE: 54 FR 28340, July 5, 1989, unless otherwise noted.

1852.000 Scope of part.

This part, in conjunction with FAR Part 52:

(a) Gives instructions for using provisions and clauses prescribed by this regulation and lower level provisions and clauses; and

(b) Sets forth the provisions and clauses prescribed in this regulation.

Subpart 1852.1—Instructions for Using Provisions and Clauses

1852.101 Using FAR part 52.

NASA contracting offices prescribing or developing clauses under the authority of FAR 52.101(b)(2)(i)(B) or (C) shall ensure that the requirements of FAR subpart 1.4 and subpart 1801.4 are met.

1852.103 Identification of provisions and clauses.

(a) Provisions and clauses prescribed by a NASA field installation to satisfy the needs of that particular installation shall be identified as stated in paragraphs (a) (1) and (2) of this section. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section 1852.103.

(1) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, GSFC, HR, HW, JSC, KSC, LARC, LERC, MSFC, or SSC). The base shall be a numeric value beginning with "52.2," with the next two digits corresponding to the number of the FAR or NASA FAR Supplement subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from -90 to -199. For example, the first Johnson Space Center (JSC) provision or clause relating to Part 36 of the FAR or NASA FAR Supplement shall be JSC 52.236-90, the second JSC 52.236-91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(2) Contracting officers shall identify provisions and clauses as in the following examples:

(i) I.2 BID ENVELOPES (GSFC 52.214-90) (AUGUST 1987) This example is applicable when identifying the title of provisions and clauses in solicitations and contracts using the uniform contract format (UCF). The first number ("I.2") designates the UCF section and the sequential clause within that section. "GSFC 52.214-90" specifies the clause number.

(ii) GSFC 52.214-90—Bid Envelopes (AUGUST 1987) This example is applicable in all instances in which the provision or clause citation is not associated with the UCF number.

(b) Contracting officers shall not number provisions and clauses developed for individual procurements only. For example, "F.3 Delivery Procedures for Special Hardware" cites the third clause in Section F of a contract using the UCF, but has no clause number or date identified with it, indicating that the clause was developed for the particular contract it appears in.

1852.103-70 Identification of modified provisions and clauses.

When a FAR clause or provision is included in a solicitation or contract and the NFS prescribes a modification, the title line shall identify the modification as shown below. This format shall be used both for incorporation by reference and when using full text.

52.232-22 Limitation of Funds (APR 1984)—as modified by NASA FAR Supplement 1832.705-270(d)

1852.104 Procedures for modifying and completing provisions and clauses.

NASA FAR Supplement provisions and clauses shall not be modified (see FAR 52.101(a)) unless their modification is authorized by this regulation. When it is authorized, contracting officers must comply with the procedures in FAR 52.104.

1852.107 Provisions and clauses prescribed in Subpart 52.1.

1852.107-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.252-70, Compliance with NASA FAR Supplement, in all contracts, including letter contracts.

Subpart 1852.2—Texts of Provisions and Clauses

1852.203-70 Contracts between NASA and former NASA employees.

As prescribed in 1803.7002, insert the following provision in all solicitations except IFB's:

CONTRACTS BETWEEN NASA AND FORMER NASA EMPLOYEES (DEC 1989)

The offeror represents that he or she ( ) is, or ( ) is not, an individual who was employed by NASA during the past two years, or a firm in which such an individual is a partner, principal officer, or majority shareholder or that is otherwise controlled or predominantly staffed by such individuals.

(End of provision)

1852.204-70 Report on NASA subcontracts.

As prescribed in 1804.672, insert the following clause in all NASA contracts of $500,000 or more or when a modification increases the amount of a contract to $500,000 or more:

REPORT ON NASA SUBCONTRACTS (DEC 1988)

(a) The Contractor shall submit information on NASA Form 667 to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, substantially as follows with respect to each subcontract or subcontract modification exceeding $10,000 as soon as possible after its execution:

(1) The name and address of the prime contractor and the NASA prime contract number.

(2) The name and address of the subcontractor.

(3) Whether the subcontractor is a large or small business concern and/or a minority business concern.

(4) Whether the type of effort being performed involves research and development.

(5) A brief description of the subcontract work.

(6) The amount of the subcontract.

(7) The principal location where the subcontract work is to be performed, if known.

(b) The Contractor and its subcontractors shall submit negative reports annually, if applicable, on each prime contract and first-tier subcontract subject to this reporting requirement. These negative reports shall be submitted not later than October 31 for the 12-month period ending September 30th of each year. The negative reporting shall be continued until the contract or subcontract has been physically completed and the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, so notified by the Contractor or subcontractor.

(c) "Subcontract," as used in this clause, means procurement in excess of $10,000 by the Contractor or first-tier subcontractor of articles, materials, or services for performing this contract, except purchases, regardless of amount, of stock items, materials, or services that cannot be specifically identified with this contract.

(d) "Research and development," as used in this clause, means basic and applied research, and design and development of prototypes and processes, to (1) Pursue a planned search for new knowledge, with or without reference to a specific application, (2) apply existing knowledge in the creation of new products or processes, or (3) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.

(e) The Contractor shall—

(1) Insert the provisions of paragraphs (a), (b), (c), and (d) of this clause in each subcontract over $50,000;

(2) Instruct its subcontractors to submit their reports directly to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546; and

(3) Provide its subcontractors with the number of the NASA prime contract.

(End of clause)

1852.204-71 NASA contractor financial management reporting.

As prescribed in 1804.675-1(a), insert the following clause in contracts that require submission of any of the NASA Form 533 series of reports (excluding Form 533P).

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (DEC 1988)

(a) The Contractor shall submit Financial Management Reports on NASA Form 533 in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2) and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with technical and schedule reporting, shall be set forth in the contract Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information reported to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the contract Schedule or as designated in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract Schedule line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only.

(d) The Contractor shall insert the substance of this clause in all first-tier cost-reimbursement subcontracts specifically identified in writing by the Contracting Officer and shall include their cost in its cost reports.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

1852.204-72 NASA contractor financial management reporting (performance analysis report).

As prescribed in 1804.675-1(b), insert the following clause in contracts that require submission of NASA Form 533P in addition to the Form 533 series submission prescribed at 1804.675-1(a).

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (PERFORMANCE ANALYSIS REPORT) (DEC 1988)

Monthly reporting of contract performance shall be accomplished on the NASA Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P) in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2) and on the reverse side of the form, as supplemented in the Schedule of this contract.

(End of clause)

1852.204-75 Security Classification Requirements.

As prescribed in 1804.404-70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS (SEPT 1989)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of ________ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204-2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment ____ [Insert the attachment number of the DD Form 254].

(End of clause)

[54 FR 39375, Sept. 26, 1989]

1852.207-70 Estimate of work.

As prescribed in 1807.7001, insert the following provision:

ESTIMATE OF WORK (OCT 1988)

It is estimated that approximately $ [insert estimated value of procurement] will be available to perform this work. This estimate is provided as a guide only to the approximate effort required.

(End of provision)

1852.208-70 Rates.

As prescribed in 1808.309, insert the following clause:

RATES (DEC 1988)

(a) The Contractor shall be paid at the rates set out in Appendix A, provided that the Government shall be liable for any minimum monthly charge specified in this contract commencing with the billing period in which service is initially furnished and continuing until the contract is terminated, except that this charge shall be equitably prorated for the billing periods in which commencement and termination of this contract become effective.

(b) The Contractor hereby certifies that the rates for the service furnished under this contract do not exceed the lowest rates available to any prospective customer under like conditions, and agrees that during the life of this contract the Government shall continue to be billed at the lowest rates applicable for similar conditions of service.

(End of clause)

1852.208-71 Public regulation and change of rates.

As prescribed in 1808.309, insert the following clause:

PUBLIC REGULATION AND CHANGE OF RATES (DEC 1988)

(a) Rates under this contract shall be subject to regulation in the manner and to the extent prescribed by law by any Federal, State, or local regulatory agency having jurisdiction. The Contractor agrees to give the Contracting Officer written notice of the filing of an application for rate changes concurrently with the filing of the application. Such notice shall fully describe the proposed changes.

(b) If during the term of this contract the public regulatory agency having jurisdiction approves rates higher or lower than those stipulated in this contract, for like conditions of service, the Contractor agrees to continue to furnish service as stipulated in the contract and the Government agrees to pay the changed rates from the date they are made effective.

(c) If the regulatory agency promulgates any regulation concerning matters other than rates that affects this contract, the Contractor shall immediately notify the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) If the Contractor, during the term of this contract, makes effective any new or amended rate schedule for the class of service furnished the Government at the service location that contains lower rates or conditions more favorable to the Government, the Contractor shall (1) forward to the Contracting Officer a copy of the schedule within 15 days after its effective date and, upon receipt of written request from the Government, (2) substitute the new or amended schedule for the one then in effect under this contract for that service location, commencing with the billing period in which the request is received.

(End of clause)

1852.208-72 Change in class of service.

As prescribed in 1808.309, insert the following clause:

CHANGE IN CLASS OF SERVICE (DEC 1988)

(a) In the event of a permanent change in the class of service furnished the Government at the service location, service shall be furnished to that service location at the lowest available rate schedule of the Contractor applicable to the class of service furnished following that permanent change, subject to the Rates clause of this contract.

(b) If the Contractor's rate schedule on file with the regulatory agency and applicable to services provided by the Contractor does not contain a schedule applicable to the class of service furnished the Government, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished.

(End of clause)

1852.208-73 Contractor's facilities.

As prescribed in 1808.309, insert the following clause:

CONTRACTOR'S FACILITIES (DEC 1988)

(a) The Contractor, at its expense, shall furnish, install, operate, and maintain all facilities required to furnish service under this contract to, and measure that service as of, the point of delivery specified in the Service Specifications. Title to these facilities shall be and remain in the Contractor, and the Contractor shall be responsible for all loss of or damage to them.

(b) The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to any limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract, including use of the site or sites agreed upon by the parties for the installation, operation, and maintenance of the facilities of the Contractor required to be located upon Government premises. These facilities shall be and remain the property of the Contractor and shall, at all times during the life of this contract and any renewals, be operated and maintained by the Contractor at its expense. All taxes and other charges in connection with these facilities, together with all liability arising out of their construction, operation, or maintenance, shall be borne by the Contractor.

(c) Authorized representatives of the Contractor shall be allowed access to the Contractor's facilities at suitable times to perform the Contractor's obligations regarding the facilities. The facilities shall be removed and Government premises restored to their original condition by the Contractor at its expense within a reasonable time after the Government revokes the permit or license granted by this clause and in any event within a reasonable time after termination of this contract, provided that if the contract is terminated for default, the facilities may be retained in place at the Government's option until comparable service is obtained elsewhere.

(d) Proper Government authority may limit or restrict the right of access granted by this clause in any manner considered by that authority to be necessary for the national security.

(End of clause)

1852.208-74 Technical provisions.

As prescribed in 1808.309, insert the following clause. Minor changes may be made in it when insisted upon by the contractor to conform with established procedures or those in the contractor's published rates filed with a regulatory agency. The following types of changes, when made for this purpose, are not considered within the intent of 1808.307-71 relating to contracts requiring NASA Headquarters approval.

(a) *Measurement of service.* (1) The words "billed conjunctively" in the second sentence of clause paragraph (a)(1) refer to the combination of similar quantities measured by two or more meters into a single quantity for the purpose of billing, as if the bill were prepared for a single meter. This sentence may be deleted, or the word "separately" may be inserted in lieu of the word "conjunctively," to conform to the contractor's regulated practice and/or when the schedule under which bills are computed is such that billing separately will be more economical than billing conjunctively.

(2) In clause (a)(2), the periodic intervals prescribed between meter readings may be changed to conform to the contractor's regulated practice.

(b) *Meter test.* (1) The first sentence of clause (b), requiring testing at intervals not exceeding one year, may be changed to provide for meter tests in accordance with the contractor's regulated practice.

(2) In the third sentence of clause (b), the percentage error (shown as 2 percent) may be changed to comply with the Contractor's regulated practice.

(c) *Continuity of service and consumption.* (1) In clause (d)(1), the adjustment provision may be deleted or changed, if necessary, to conform with the provisions of the contractor's field rate schedules. This subparagraph may be ended after the word "facilities" and before the word "provided." For the period, "10 hours" may be changed.

(2) Clause (d)(2) may be deleted or changed, if the contractor's filed rates contain a provision requiring a continuation of demand or similar charges on a ready-to-serve basis during a period that the Government is unable to operate the service location for any cause beyond its control.

TECHNICAL PROVISIONS (DEC 1988)

(a) *Measurement of service.* (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, calibrated, and read by the Contractor at its expense. When two or more meters are installed at the service location, their readings shall be billed conjunctively. If any meter fails to register or registers incorrectly the service furnished through it, the parties shall agree upon the length of period during which it failed to register or registered incorrectly and the quantity of service delivered through it during that period, and, upon agreement, an appropriate adjustment shall be made in the Government's bills. For the purpose of the preceding sentence, any meter that registers not more than 2 percent slow or fast shall be deemed correct.

(2) The Contractor shall read meters on the same day of each month; if, however, that day falls on a Saturday, Sunday, or legal holiday, or if the Contractor is prevented from reading the meters on that day, the Contractor shall read the meters on the next succeeding business day on which it is able to do so, provided that (i) all bills based on meter reading intervals of less than 27 days or more than 33 days shall be prorated accordingly and (ii) there shall be no more than 12 billings in any one year.

(b) *Meter test.* The Contractor, at its expense, shall periodically inspect and test the meters installed by it at intervals not exceeding 1 year. At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all of these meters in the presence of Government representatives. The cost of these additional tests shall be borne by the Government if the percentage of errors is found to be not more than 2 percent slow or fast. No meter may be placed or allowed to remain in service that has an error in registration exceeding 2 percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall, so far as possible, be given by the Contracting Officer to the Contractor regarding any material changes proposed in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* (1) The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the service location, but shall not be liable for damages or breach of contract or otherwise to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the Contractor's control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophes, strikes, or failure or breakdown of transmission or other facilities; provided that when any such failure, suspension, diminution, or variation aggregates more than 10 hours during any billing period, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge).

(2) If the Government cannot operate the service location in whole or in part for any cause beyond its control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophes, or strikes, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge) if the period during which the Government is unable to operate that service location in whole or in part exceeds 15 days during any billing period.

(End of clause)

1852.208-75 Renewal of contract.

As prescribed in 1808.309, insert the following clause:

Renewal of Contract (Dec 1988)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least ________ days before expiration. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed ________ years.

(End of clause)

1852.208-76 Change in rates.

As prescribed in 1808.309, insert the following clause:

Change in Rates (Dec 1988)

(a) If at any time during the term of this contract either of the parties considers it appropriate to change all or part of the rates applicable to the service furnished under this contract, the parties agree to promptly negotiate new rates upon receipt by one party of a written request from the other (1) specifying the rates to which a change is considered appropriate, (2) setting forth the proposed change, and (3) stating in detail the reasons for the proposed change. Any rate change agreed to by the parties as the result of such negotiations shall be made a part of this contract by the issuance of a supplemental agreement and shall become effective as of the date of the request for a change in rates, unless otherwise agreed.

(b) The Contractor agrees that a duly authorized representative of NASA shall have access to and the right to examine any pertinent books, documents, papers, or records of the Contractor relating to costs that form the basis for the rates.

(End of clause)

1852.208-77 Connection charge.

As prescribed in 1808.309, insert the following clause:

Connection Charge (Dec 1988)

(a) *Charge.* The Government, for the furnishing and installation by the Contractor at the Contractor's expense of the New Facilities described in Appendix C, attached to this contract and made a part of it, shall pay the Contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, $______, representing the sum of $______ less the agreed salvage value in the amount of $______, as shown in Appendix C; provided that, as a condition for final payment, the Contractor executes a release acceptable to the Contracting Officer of claims against the Government arising from that furnishing and installation.

(b) *Ownership, operation, and maintenance of new facilities to be provided.* The facilities to be supplied by the Contractor under this clause, notwithstanding the Government's payment of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract and any renewals, be operated and maintained by the Contractor at its expense. All taxes and other charges in connection with these facilities, together with all liability arising out of their construction, operation, or maintenance, shall be borne by the Contractor.

(c) *Credits.* (1) The Contractor agrees to allow the Government on each monthly bill for service furnished under this contract to the service location, a credit of ___ percent of the amount of each bill as rendered, until the accumulation of credits equals the amount of the connection charge, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each bill.

(2) If the Contractor, before any termination of this contract but after completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or at all) by means of those facilities, the corresponding benefit to the Contractor is hereby recognized. It is therefore

agreed that upon initiation of such service, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge, or accelerate the credits provided for under paragraph (c)(1) of this clause to 100 percent of each monthly bill, until there is fully credited a sum equitably representing the same proportion of the uncredited balance of the connection charge as of the date of initiation of such service (as agreed upon by the parties) as the portion of the facilities utilized in serving the other customer bears to the complete facilities described in Appendix C.

(d) *Termination before completion of facilities.* The Government reserves the right to terminate this contract at any time before completion of the facilities with respect to which the Government is to pay a connection charge. If the Government exercises this right, the Contractor shall be paid fair compensation, exclusive of profit, with respect to those facilities.

(e) *Termination after completion of facilities*— (1) *Termination by the Government.* If the Government terminates this contract after completion of the facilities for which the Government is to pay a connection charge, but before the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the possible continued usefulness of those facilities is hereby recognized. Upon such termination, the Contractor shall have the following options:

(i) To retain in place for 12 months or more after the notice of termination by the Government such facilities on condition that (A) if, during that period, the Contractor serves any other customer by means of the facilities, the Contractor shall, in lieu of allowing credits, pay the Government during the period installments in like amount, manner, and extent as the credits provided for under paragraph (c) of this clause before the termination, and (B) immediately after the period, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(ii) To remove such facilities at the Contractor's own expense within 12 months after the effective date of the termination by the Government; provided, that if the Contractor elects to remove them, the Government shall have the option of purchasing them at the agreed salvage value set forth in Appendix C; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property that the Contractor elects to remove and that the Government elects to purchase at the agreed salvage value.

(2) *Termination by the contractor.* If the Contractor terminates service under, or otherwise defaults in performance of, this contract before the crediting in full, in accordance with the terms of this contract, of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of termination.

(End of clause)

1852.208-78 Termination Charge.

As prescribed in 1808.309, insert the following clause and attach Appendix C to the contract when a payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities. The length of time, not in excess of 60 months, as negotiated with the contractor shall be entered in the first blank. In the second blank, enter the amount of the maximum termination charge as negotiated with the contractor, but not in excess of the cost of facilities furnished and installed by the contractor less the agreed salvage value, as shown in Appendix C. Enter in the third blank the figure obtained by dividing the figure in the second blank by the figure in the first blank. The use of this clause does not affect the term of the contract; however, its use is subject to Headquarters approval in accordance with 1808.307-71.

TERMINATION CHARGE (DEC 1988)

For the furnishing and installation by the Contractor at its expense of the New Facilities described in Appendix C, attached to this contract and made a part of it, the Government shall, in the event of termination of this contract by the Government before ______ months from the date on which service commences, pay the Contractor as a termination charge ______ less ______ multiplied by the number of months service has been received after the date of termination.

(End of clause)

1852.208-79 Multiple service locations.

As prescribed in 1808.309, insert the following clause:

MULTIPLE SERVICE LOCATIONS (DEC 1988)

(a) The Contracting Officer may at any time, by written order, designate any service location within the Contractor's service area at which service shall be furnished or discontinued under the order, and the contract shall be modified in writing accordingly by adding to or deleting from the Service Specifications the name and location of the appropriate service location and specifying (1) a different rate if applicable, (2) the appropriate point of delivery, (3) different service specifications if applicable, and (4) any other appropriate terms and conditions.

(b) The minimum monthly charge specified in this contract shall be equitably prorated from the billing period in which commencement or discontinuance of service at any service location designated under the Service Specifications becomes effective.

(End of clause)

1852.208-80 Contractor's facilities (short form).

As prescribed in 1808.309, insert the following clause:

CONTRACTOR'S FACILITIES (SHORT FORM) (DEC 1988)

The Contractor, at its expense, shall furnish, install, operate, maintain, retain title to, and be responsible for all loss of or damage to the facilities required to furnish the service provided for under this contract. The Contractor shall be allowed access to its facilities on Government premises at suitable times and shall, at the Contractor's expense, remove the facilities and restore the premises to their original condition within a reasonable time after this contract's termination.

(End of clause)

1852.208-81 Printing and duplicating.

As prescribed in 1808.870, insert the following clause:

PRINTING AND DUPLICATING (DEC 1988)

(a) The Contractor shall reproduce any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

(b) The term "printing", as used in this clause, is defined in the Government Printing and Binding Regulations and includes the processes of composition, platemaking, presswork, binding, and the end items produced by such processes and equipment.

(c) The Contractor is authorized to duplicate by offset platemaking units not requiring the use of negatives; copy-processing machines not requiring the use of negatives or metal plates; or offset lithograph presses with single unit, sheet feed, maximum sheet size 11x17 inches and plate image no longer than 10¾x14¼ inches. However, the Contractor shall not exceed 5,000 production units of any page nor 25,000 production units in the aggregate for multiple page duplication. A "production unit" is one sheet, size 8½x11 inches (215x280 mm), one side only, and one color.

(d) If the Contractor has reason to believe that any reproduction required under this contract violates the regulations referred to in paragraph (a) of this clause, the Contractor shall provide the Contracting Officer with immediate notice in writing and request approval prior to accomplishment of the reproduction.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27089, June 29, 1990]

1852.208-83 Acquisition of helium.

As prescribed in 1808.002-71, insert the following clause:

ACQUISITION OF HELIUM (MAR 1990)

(a) In accordance with 30 CFR parts 601 and 602, helium furnished under this contract (purchase order) shall be Department of the Interior, Bureau of Mines, helium or shall be replaced by the supplier with an equivalent volume of helium purchased from the Bureau of Mines.

(b) The Contractor may procure (1) liquid helium or (2) gaseous helium of a quality not supplied by the Bureau of Mines from commercial sources if these sources are qualified by the Bureau of Mines and included in the Bureau of Mines publication, "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies." Copies of this publication may be obtained from the Bureau of Mines, Helium Operation, P.O. Box H4372, Herring Plaza, Amarillo, Texas 79101.

(c) The Contractor shall provide a copy of each contract (purchase order) for helium from commercial sources to the Contracting Officer and Bureau of Mines at the address in paragraph (b) of this clause.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 12177, Apr. 2, 1990]

1852.209-70 Product removal from qualified products list.

As prescribed in 1809.206-71, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (DEC 1988)

If, during the performance of this contract, the product being furnished is removed from the Qualified Products List for any reason, the Government may terminate the contract for Default pursuant to the default clause of the contract.

(End of clause)

1852.209-71 Limitation of future contracting.

As prescribed in 1809.508-2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.508:

Limitation of Future Contracting (Dec 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

1852.209-72 Composition of the contractor.

As prescribed in 1809.670, insert the following clause:

Composition of the Contractor (Dec 1988)

If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.

(End of clause)

1852.210-70 Brand name or equal.

As prescribed in 1810.011, insert the following provision:

Brand Name or Equal (Dec 1988)

(a) As used in this provision, "brand name" means identification of products by make and model. The term "bid" means "offer" if this is a negotiated acquisition.

(b) If items called for by this solicitation are identified in the Schedule by a "brand name or equal" description, that identification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products, including products of the brand name manufacturer other than the one described by brand name, will be considered for award if the products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or that product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its bid, as well as on other information reasonably available to the contracting activity.

(2) Caution to Offerors: The contracting office is not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished

or to information otherwise available to the contracting office.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the bid a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show them.

(4) If this is a sealed-bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

1852.210-71 Descriptive literature for used material.

As prescribed by 1810.011-70(b), insert the following provision:

DESCRIPTIVE LITERATURE FOR USED MATERIAL (DEC 1988)

(a) Offerors' attention is directed to the provision in this solicitation entitled "Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property." If an offeror intends to furnish any items falling within any of the classes of property addressed by that provision, the following information must be submitted as an attachment to the offer:

[Insert the information needed to determine that items can reasonably be expected to conform to the solicitation requirements.]

(b) Offerors are specifically advised that if this procurement is being conducted in accordance with procedures for sealed bidding (see FAR part 14), a failure to provide the information identified in paragraph (a) above will render the offeror nonresponsive.

(End of provision)

1852.210-72 Supplies and/or services to be furnished

As prescribed in 1810.011-70(c), insert the following clause:

SUPPLIES AND/OR SERVICES TO BE FURNISHED (DEC 1988)

The contractor shall provide all resources (except as may be expressly stated in this contract as furnished by the Government) necessary to furnish the items below in accordance with the Description/Specifications/Work Statement in Section C.

Item No.	Description	Quantity	Unit	Unit price	Tota amt

[Insert the item number, brief description, quantity, unit, unit price, and total dollar amount.]

(End of clause)

1852.210-75 Packaging and marking.

As prescribed in 1810.011-70(d), insert the following clause:

PACKAGING AND MARKING (DEC 1988)

(a) The Contractor shall pack and mark all hardware deliverable under this contract in accordance with the provisions of NASA Handbook (NHB) 6000.1, Requirements for Packaging, Handling, and Transportation and/or MIL-STD-2073, as applicable, except as noted below:

[Insert exceptions to packing and marking requirements or "None"]

(b) The Contractor shall pack potentially hazardous items in accordance with paragraph 204 of NHB 6000.1.

(c) The Contractor shall develop packaging, handling, and transportation records, if required, from engineering and packaging data. The Contracting Officer's technical representative is the approving official of the records and special packaging data under paragraph 302 of NHB 6000.1.

(d) The Contractor's packaging specifications or procedures may be utilized if they are (i) not in conflict with cited NASA specifications and (ii) approved in writing by the Contracting Officer. In any conflict between NASA and the Contractor specifications or procedures, the NASA documents cited in this clause shall take precedence.

(e) The Contractor shall place identical requirements on all subcontracts.

(End of clause)

PACKAGING AND MARKING (ALTERNATE I)

(a) The contractor shall preserve, pack, and mark for shipment all items deliverable under this contract in accordance with good commercial practices and adequate to ensure both acceptance by common carrier and safe transportation at the most economical rate(s).

(b) The contractor's markings on shipping containers shall be clearly legible from a distance of 36 inches. The contractor may mark by stencil, rubber stamp, or lacquer over a coated gummed label.

PACKAGING AND MARKING (ALTERNATE II)

(f) The following items to be furnished under this contract are for space flight use: [Insert items for space flight use.]

(g) All markings for space flight items shall be blue in color. All shipping containers, shipping documents, and purchasing documents for these items shall be marked "ITEMS FOR SPACE FLIGHT USE."

(h) The Contractor shall prominently display a NASA Critical Space Item Label on the exterior of all Class I, Class II, and Class III interim packages and exterior shipping containers to alert all shipping and handling personnel to the criticality of the item in accordance with paragraph 303 of NHB 6000.1.

(End of clause)

1852.212-70 Notice of delay.

As prescribed at 1812.104-70(a), insert the following clause:

NOTICE OF DELAY (DEC 1988)

If, because of technical difficulties, the Contractor becomes unable to complete the contract work at the time specified, notwithstanding the exercise of good faith and diligent efforts in performing the work called for under this contract, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons for it. The notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than 45 days before the completion date specified in this contract, unless otherwise permitted by the Contracting Officer. When notice is given, the Contracting Officer may extend the time specified in the Schedule for such period as is deemed advisable.

(End of clause)

1852.212-72 Partial shipments.

Insert the following clause as prescribed in 1812.104-70(c).

PARTIAL SHIPMENTS (DEC 1988)

Partial shipments will not be accepted unless authorized elsewhere in this contract or by the Contracting Officer's representative at the time of delivery. The Government reserves the right to return partial shipments to the Contractor, transportation charges collect.

(End of clause)

1852.212-73 Delivery schedule.

As prescribed in 1812.104-70(d), insert the following clause:

DELIVERY SCHEDULE (DEC 1988)

The contractor shall deliver the items required to be furnished by this contract as follows:

Item No.	Description	Quantity	Delivery date	Shipping address

[Insert the applicable item numbers, descriptions, quantities of items, delivery dates, and shipping addresses.]

(End of clause)

1852.212-74 Period of Performance.

As prescribed in 1812.104-70(e), insert the following clause:

PERIOD OF PERFORMANCE (DEC 1988)

The period of performance of this contract shall be [Insert period of performance dates].

(End of clause)

1852.214-70 Caution to offerors furnishing descriptive literature.

As prescribed in 1814.201-670(a), insert the following provision:

CAUTION TO OFFERORS FURNISHING DESCRIPTIVE LITERATURE (DEC 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that "Data are subject to change without notice," "Prices subject to change without notice," or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202-5.]

(End of provision)

1852.214-71 Grouping for aggregate award.

As prescribed in 1814.201-670(b), insert the following provision:

GROUPING FOR AGGREGATE AWARD (MAR 1989)

(a) The Government will evaluate offers and make award on a basis of the aggregate offers for items [Insert the item numbers and/or descriptions].

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on all of the items specified in paragraph (a) of this section.

(End of provision)

1852.214-72 Full quantities.

As prescribed in 1814.201-670(c), insert the following provision:

FULL QUANTITIES (DEC 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities.

(End of provision)

1852.215-70 Increases in estimated costs.

As prescribed in 1815.613-72, insert the following provision:

INCREASES IN ESTIMATED COSTS (DEC 1988)

Once the apparent successful offeror has been selected, that offeror may not unilaterally increase the estimated costs submitted with its proposal except for—

(a) Increases resulting from updating or correcting the certified cost or pricing data submitted with the proposal;

(b) Costs resulting from the Government's directed correction of identified weaknesses in the proposal that must be corrected as a condition of contracting; or

(c) Minor changes in the requirements of the solicitation. In such cases, the Government will consider only those increases arising from requirements actually affected by the changes (irrespective of whether the changes result in an increase or decrease in the requirements or are initiated by the Government or the offeror) and then only to the extent the increases are identified and justified.

(End of provision)

1852.215-71 Adjustment for subcontract price redetermination.

As prescribed in 1815.870-2, insert the following clause:

ADJUSTMENT FOR SUBCONTRACT PRICE REDETERMINATION (DEC 1988)

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of that subcontract and the firm price established for it. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under the contract to reflect the subcontract price revision.

The equitable adjustment shall be evidenced by a modification to this contract.

[list subcontracts]

(End of clause)

1852.215-72 Restriction on use and disclosure of proposal/quotation information (Data).

As prescribed in 1815.407-70(a), insert the following provision:

RESTRICTION ON USE AND DISCLOSURE OF PROPOSAL/QUOTATION INFORMATION (DATA) (DEC 1984)

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page of the proposal or quotation and specify the information subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

RESTRICTION ON USE AND DISCLOSURE OF PROPOSAL AND QUOTATION INFORMATION (DATA)

The information (data) contained in ___ [Insert page numbers or other identification] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; *provided*, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(End of provision)

1852.215-73 Late submissions, modifications, and withdrawals of proposals. (AO and SBIR programs).

As prescribed in 1815.407-70(b), use the following provision in lieu of the provision at FAR 52.215-10 in Announcement of Opportunity and SBIR solicitations:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (AO AND SBIR PROGRAMS) (DEC 1988)

(a) The Government reserves the right to consider proposals or modifications, including any revision of an otherwise successful proposal, received after the date indicated for receipt of proposals if it would be in the Government's best interest to do so.

(b) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

1852.215-74 Alternate proposals.

As prescribed in 1815.407-70(c), insert the following provision:

ALTERNATE PROPOSALS (DEC 1988)

(a) The offeror may submit an alternate proposal to accomplish any aspect of the effort or product contemplated by the solicitation in a manner that might create a beneficial improvement to the Government. The Government will consider an alternate proposal if it is accompanied by a basic proposal prepared in accordance with instructions contained in and responsive to this solicitation. The alternate proposal must be complete by itself and comply with the proposal instructions of this solicitation. The alternate proposal will be evaluated in accordance with the evaluation factors of this solicitation.

(b) In the event the Government receives an alternate proposal that, if accepted, would result in a contract with terms varying in one or more material respects from those contained in this solicitation (i.e., change in scope), and the Government concludes that implementation of the approach contained in the alternate proposal would be in its best interests, the Government may modify its solicitation in a manner appropriate to incorporate the change in scope but not reveal the substance of the alternate proposal, and thereafter give all offerors (and others if the facts warrant) an opportunity to respond to the modified solicitation.

(End of provision)

1852.215-75 Expenses Related to Offeror Submissions.

As prescribed in 1815.407-70(d), insert the following provision:

EXPENSES RELATED TO OFFEROR SUBMISSIONS (DEC 1988)

This solicitation neither commits the Government to pay any cost incurred in the submission of the offer or in making necessary studies or designs for preparing the offer, nor to contract for services or supplies. Any costs incurred in anticipation of a contract shall be at the offeror's own risk.

(End of provision)

1852.215-76 False statements.

As prescribed in 1815.407-70(e), insert the following provision:

FALSE STATEMENTS (DEC 1988)

Proposals must set forth full, accurate, and complete information as required by the solicitation (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001.

(End of provision)

1852.215-77 Preproposal/pre-bid Conference.

As prescribed in 1815.407-70(f), insert the following provision:

PREPROPOSAL/PRE-BID CONFERENCE (DEC 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:
Time:
Location:
Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

1852.215-78 Make or buy program requirements.

As prescribed in 1815.708-70(a), insert the following provision:

Make or Buy Program Requirements (Dec 1988)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.705. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort (see FAR 15.704).

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

1852.215-79 Price adjustment for "make-or-buy" changes.

As prescribed in 1815.708-70, insert the following clause:

Price Adjustment for "Make-or-Buy" Changes (Dec 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215-21, Change or Additions to Make-or-Buy Program, of this contract:

Item description	Make-or-buy Determination

(End of clause)

1852.215-80 Disposal of unsuccessful proposals.

As prescribed in 1815.407-70(g), insert the following provision:

Disposal of Unsuccessful Proposals (Dec 1988)

After contract award, one or more copies of each unsuccessful proposal will be retained in the Government's official contract file, and all other copies will be destroyed.

(End of provision)

1852.216-72 Evaluation of offers subject to economic price adjustment.

As prescribed in 1816.203-4(f), insert the following provision:

Evaluation of Offers Subject to Economic Price Adjustment (Dec 1988)

Notwithstanding the requirements of the ______[1] clause, offers shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Offers that provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, shall also be evaluated on this basis, but any resultant award will be made at the lower ceiling. Offers that provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or that limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

(End of provision)

1852.216-73 Estimated cost and cost sharing.

As prescribed in 1816.307-70(a), insert the following clause.

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[1] Insert the title of the clause providing for economic price adjustment.

ESTIMATED COST AND COST SHARING (DEC 1988)

(a) It is estimated that the total cost of performing the work under this contract will be $______ [insert total estimated cost].

(b) For performing of the work under this contract, the Contractor shall be reimbursed for not more than ______ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining ______ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the Limitation of Cost clause, the total estimated cost to the Government is hereby established as $______ [*insert estimated Government share*]; this amount is the maximum cost for which the Government is obligated.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(End of clause)

1852.216–74 Estimated cost and fixed fee.

As prescribed in 1816.307-70(b) insert the following clause:

ESTIMATED COST AND FIXED FEE (DEC 1988)

The estimated cost of this contract is ______ exclusive of the fixed fee of ______. The total of estimated cost and fixed fee is ______.

(End of clause)

1852.216–75 Payment of fixed fee.

As prescribed in 1816.307-70(c), insert the following clause:

PAYMENT OF FIXED FEE (DEC 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

1852.216–76 Award fee.

As prescribed in 1816.405, insert the following clause:

AWARD FEE (DEC 1988)

(a) The Government shall pay the Contractor for performing this contract such base fee, if any, and such additional fee as may be awarded, as provided in the Schedule.

(b) Payment of the base fee and award fee shall be made as specified in the Schedule; provided, that after payment of 85 percent of the base fee and potential award fee, the Contracting Officer may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

(End of clause)

1852.216–78 Firm fixed price.

As prescribed in 1816.202-70, insert the following clause:

FIRM FIXED PRICE (DEC 1988)

The total firm fixed price of this contract is $______ [Insert the appropriate amount].

(End of clause)

1852.216–79 Level-of-effort (fixed-price).

As prescribed in 1816.207-70(a), insert the following clause:

LEVEL-OF-EFFORT (FIXED-PRICE) (DEC 1988)

(a) In accomplishing the work required under this contract, the Contractor shall provide ______ direct labor hours as a minimum. These hours shall be expended as follows:

Labor category	Minimum direct labor hours

[Insert the labor categories and associated direct labor hours.]

(b) "Direct labor hours" are those productive hours expended by Contractor personnel performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term does not include sick leave, vacation, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) If, at the end of the contract term, the Contractor has not provided the minimum direct labor hours specified above, the total fixed price of this contract shall be reduced as follows: [Insert either a formula based upon the number of hours expended in the separate labor categories or the product of the hours of unexpended labor multiplied by one specified rate.]

(d) The Contractor may, at its own option, furnish more than the stated direct labor hours; however, the Contractor shall not be entitled to any increase in the fixed price of the contract for exceeding the stated direct labor hours.

(e) Within thirty (30) days after the end of the performance period and before submission of an invoice for final payment, the Contractor shall submit to the Contracting Officer a statement certifying the actual total number of direct labor hours expended under this contract. The Contractor further agrees to make available to the Contracting Officer such records as the Contracting Officer may reasonably require to determine that the minimum number of labor hours specified in this clause were expended in the performance of the work.

(End of clause)

1852.216-80 Task ordering procedure.

As prescribed in 1816.307-70(d), insert the following clause:

TASK ORDERING PROCEDURE (DEC 1988)

Performance under this contract is subject to the following ordering procedure.

(a) Within the direct labor hours specified in the Level-of-Effort clause of this contract, the Contractor shall incur costs under this contract in the performance of task orders and task order modifications issued in accordance with this ordering procedure. No other costs are authorized without the express written consent of the Contracting Officer.

(b) From time to time during the term of this contract, the Contracting Officer will issue task orders in writing to the Contractor, providing specific information on work to be performed within the scope of the contract. Each task order will indicate the objectives or results desired.

(c) Task orders will contain, as a minimum, the following information:

(1) Signature of the Contracting Officer.

(2) Contract number, order number, and date.

(3) Description of work.

(4) Maximum number of contract labor hours and other resources authorized.

(5) Documentation requirements.

(6) Delivery/performance schedule.

(7) Quality assurance standards, as appropriate.

(8) Travel authorized.

(9) Any other necessary information.

(d) The Contracting Officer may modify task orders in the same manner as they are issued.

(e) The Contractor shall submit within ten calendar days after receipt of each task order a one-time Contractor task plan. The task plan is the Contractor's overall approach for completing the task order and shall include the following:

(1) Discussion of the technical approach for performing the work.

(2) Estimated date of commencement of work, and any changes proposed to the schedule of performance.

(3) Direct labor hours, both straight time and overtime (if authorized), on a monthly basis by applicable labor category, and the total direct labor hours, including those in paragraph (e)(5) of this clause, estimated to complete the task.

(4) The travel and material estimates.

(5) An estimate for subcontractors and consultants, including the direct labor hours, if applicable.

(6) Estimated computer use time required, if applicable.

(7) Other pertinent information, such as indirect costs and inter-divisional transfers.

(8) The total estimated cost and fee, where appropriate, for completion of the task order.

(f) The Contracting Officer shall approve in writing the Contractor's task plan and any plan revisions either (1) as being in accordance with the task order or (2) with identified variations constituting a modification to the task order. All approvals shall be prior to commencement of work.

(g) In the event that there is a conflict between the requirements of the task order and the Contractor's task plan, the task order shall prevail.

(End of clause)

ALTERNATE I (DEC 1988)

As prescribed in 1816.307-70(e), delete paragraphs (e), (f), and (g) from the basic clause.

1852.216-81 Estimated cost.

As prescribed in 1816.307-70(f), insert the following clause:

ESTIMATED COST (DEC 1988)

The total estimated cost for complete performance of this contract is $_____ [insert total estimated cost of the contract]. See FAR clause 52.216-11, Cost Contract—No Fee, of this contract.

(End of clause)

1852.216-82 Level-of-effort (cost).

As prescribed in 1816.307-70(g), insert the following clause:

Level-of-Effort (Cost) (Dec 1988)

(a) During the term of the contract, the Contractor is obligated to provide not less than ___% [Insert minimum percentage of direct labor hours] nor more than ___% [Insert maximum percentage of direct labor hours] of the following direct labor hours:

Labor category	Direct labor hours

[Insert applicable labor categories, direct labor hours in each labor category, and total direct labor hours.]

(b) "Direct labor hours" are those productive hours expended by Contractor personnel performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term does not include sick leave, vacation leave, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) Once the maximum number of direct labor hours is reached or the contract term has ended, the Contractor's requirements under the contract are fulfilled, even though the specified work may not have been completed. The Contractor is not authorized to exceed the maximum of the direct labor hours specified in paragraph (a) of this clause unless a bilateral contract modification is executed. Any estimated cost and fee(s) adjustments for any additional direct labor hours shall be based solely upon the quantity of additional hours being added to the maximum number of direct labor hours specified in this clause.

(d) The fee(s), if any, are based upon the furnishing of the specified minimum level-of-effort. If the Contractor provides less than the specified minimum level-of-effort prior to expiration of the contract term, and the Government has not invoked its rights under the Termination clause of this contract to adjust the contract for such reduced effort, the Contracting Officer will unilaterally make an equitable downward adjustment to the contract fee. The downward adjustment in fee will be based upon the difference between the minimum direct labor hours specified under this clause and the amount of direct labor hours provided by the Contractor. At the Contracting Officer's discretion, the adjustment may take into consideration efficiencies in the Contractor's performance, including productivity improvements, if any, which contributed to the lesser number of direct labor hours being provided.

(End of clause)

1852.216-83 Fixed Price Incentive.

As prescribed in 1816.405(b), insert the following clause:

Fixed price incentive (Dec 1988)

The target cost of this contract is $__________. The target profit of this contract is $__________. The target price (target cost plus target profit) of this contract is $__________.

(End of clause)

1852.216-84 Estimated cost and incentive fee.

As prescribed in 1816.405-70(c), insert the following clause:

Estimated Cost and Incentive Fee (Dec 1988)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract is $_____ [Insert appropriate target cost and fee amounts].

(End of clause)

1852.216-85 Estimated cost and award fee.

As prescribed in 1816.405-70(d), insert the following clause:

Estimated Cost and Award Fee (Dec 1988)

The estimated cost of this contract is $_____. The base fee is $_____, and the maximum available award fee is $_____. Total cost, base fee, and maximum award fee is $_____. [Insert appropriate cost and fee amounts.]

(End of clause)

1852.216-86 Settlement of letter contract.

As prescribed in 1816.603-470, insert the following clause:

Settlement of Letter Contract (Dec 1988)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract_____, dated_______, and supersedes the letter contract and its modification no.(s)____. [Insert letter contract number, date, and modification numbers.]

(b) The costs and fees, or prices, established in this definitive contract represent full and complete settlement of letter contract______ and modification no.(s)____.

(c) If this definitive contract contains terms that may be construed to be inconsistent with the letter contract, the parties agree that this definitive contract states the complete agreement and intent of the parties, and any rights and duties created by the letter contract that are inconsistent with this definitive contract are hereby waived, cancelled, and released.

(End of clause)

1852.216-87 Submission of vouchers for payment.

As prescribed in 1816.307-70(h), insert the following clause:

SUBMISSION OF VOUCHERS FOR PAYMENT (DEC 1988)

(a) Public vouchers for payment of costs shall include a reference to this contract [Insert the contract number] and be forwarded to:

[Insert the mailing address for submission of cost vouchers.]

This is the designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract.

(b) The Contractor shall prepare vouchers as follows: (1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment.

(2) Seven copies of SF 1034A, SF 1035A, or equivalent Contractor's attachment.

(3) The Contractor shall mark SF 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the Contracting Officer by insertion in the memorandum block the names and addresses as follows:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(c) Public vouchers for payment of fee shall be prepared similarly and be forwarded to:

[Insert the mailing address for submission of fee vouchers.]

This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(d) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

(End of clause)

1852.217-70 Property administration and reporting.

As prescribed in 1817.7002-4 insert the following clause:

PROPERTY ADMINISTRATION AND REPORTING (DEC 1988)

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Defense Purchase Request shall be controlled and accounted for in accordance with the Military Department's normal procedures. All excess items, however, costing $500 or more and in condition Code 7 or better (GSA Condition Codes) shall be reported to the NASA originating office for possible reutilization before disposition.

(End of clause)

1852.219-72 SIC code and small business size standard.

As prescribed in 1819.170, insert the following provision:

SIC CODE AND SMALL BUSINESS SIZE STANDARD (DEC 1988)

(a) The standard industrial classification (SIC) code(s) for this procurement is (are) ______ [Insert SIC code].

(b) The small business size standard is ______ [Insert the number of employees, or dollar value in average annual receipts for the last three (3) fiscal years].

(End of provision)

1852.219-73 Small business and small disadvantaged business subcontracting plan.

As prescribed in 1819.708-70, insert the following provision:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (DEC 1988)

(a) This provision is not applicable to small business concerns.

(b) The contract expected to result from this solicitation will contain FAR clause 52.219-9, "Small Business and Small Disadvantaged Business Subcontracting Plan." The apparently successful offeror must submit the complete plan within ____ [Insert number of days] calendar days after request by the Contracting Officer.

(End of provision)

ALTERNATE I (DEC 1988)

As prescribed in 1819.708-70, delete the last sentence of paragraph (b) of the basic clause and substitute the following:

Each offeror must submit the complete plan with its initial proposal.

1852.222-70 Facilities nondiscrimination notice.

As prescribed in 1822.7002(a), insert the following clause:

FACILITIES NONDISCRIMINATION NOTICE (APR 1988)

If the annual rental under this lease, combined with the annual rental under all other NASA leases of space in the building in which the space covered by this lease is located, exceeds $10,000, the lessor agrees to comply with the requirements of the Facilities Nondiscrimination clause of this contract.

(End of clause)

1852.222-71 Facilities nondiscrimination.

As prescribed in 1822.7002(b), insert the following clause:

FACILITIES NONDISCRIMINATION (DEC 1988)

(a) As used in this clause, "facility" means store, shop, restaurant, cafeteria, rest room, or any other public facility in the building in which the space covered by this lease is located.

(b) The lessor shall not discriminate against anyone because of race, color, religion, or national origin in furnishing, or by refusing to furnish, the use of any facility, including any services, privileges, accommodations, and activities provided by that facility. Nothing in this clause requires the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants and their employees, customers, patients, clients, guests, and invitees.

(c) Any noncompliance by the lessor with this clause shall constitute a material breach of this lease. In the event of noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue any other remedies provided by law. In the event of termination, the lessor is liable for all excess costs of the Government in acquiring substitute space, including the cost of moving to that space. Substitute space shall be obtained in as close proximity to the lessor's building as is feasible, and moving costs shall be limited to the actual expenses incurred.

(d) Whenever an agreement is to be entered into or a concession is to be permitted to operate, the lessor shall include or require the inclusion of paragraphs (a), (b), and (c) of this clause in every such agreement or concession arrangement under which any person other than the lessor operates or has the right to operate any facility. Nothing in this clause, however, requires the lessor to include or require the inclusion of those paragraphs in any previously existing agreement or concession arrangement, or in one under which a party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend.

(e) The lessor shall take, as expeditiously as possible, any lawful actions NASA may direct to enforce the intent of this clause, including termination of the agreement or concession and institution of court action.

(End of clause)

1852.223-70 Safety and health.

As prescribed in 1823.7004, insert the following clause:

SAFETY AND HEALTH (DEC 1988)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract and shall, to the extent set forth in the contract Schedule submit a safety plan and a health plan for the Contracting Officer's approval. The Contractor shall comply with all Federal, State, and local laws applicable to safety and health in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions set forth in the contract Schedule.

(b) The Contractor shall take or cause to be taken any other safety and health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other provision of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of $25,000 or more arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule. The Contractor shall investigate all work-related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(d) (1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (d)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that (1) amount to $1,000,000 or more (unless the Contracting Officer makes a written determination that this is not required), (2) require construction, repair, or alteration in excess of $25,000, or (3) regardless of dollar amount, involve the use of hazardous materials or operations.

(f) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.

(g) As a part of the Contractor's safety plan (and health plan, when applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in paragraphs (a) and (b) of this clause, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence either or both of the following, as required by the contract Schedule or by the Contracting Officer:

(1) Written hazardous operating procedures for all hazardous operations.

(2) A certification program for personnel involved in hazardous operations.

(End of clause)

1852.223-71 Frequency authorization.

As prescribed in 1823.7101, insert the following clause:

FREQUENCY AUTHORIZATION (DEC 1988)

(a) Authorization of radio frequencies required in support of this contract shall be obtained by the Contractor or subcontractor in need thereof.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. Procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852.223-72 Potentially hazardous items.

As prescribed in 1823.303-70, insert the following clause:

POTENTIALLY HAZARDOUS ITEMS (DEC 1988)

(a) The Contractor shall furnish complete design information and drawings showing all details of construction, including materials, for the following items or components:

[Insert the potentially hazardous items or components.]

These items or components are designated as potentially hazardous to employees and subcontractors who are to perform any work in connection with installing them in combination with other equipment, or in testing them either alone or in combination with other items or components, or in handling them. The contractor shall inform such employees or subcontractors of the potentially hazardous nature of these items or components before requesting or directing the performance of work.

(b) This requirement for delivery of data supersedes any terms of this contract permitting withholding of data.

(c) The Contractor shall include this clause, including this paragraph (c), in each subcontract at any tier under this contract that calls for the manufacture or handling of the items or components designated according to paragraph (a) of this clause as potentially hazardous.

(End of clause)

1852.223-73 Safety and health plan.

As prescribed in 1823.7004(e), insert the following provision:

Safety and Health Plan (Dec 1988)

The offeror shall submit a detailed safety and health plan, as part of the offeror's proposal, showing how the Contractor intends to protect the life, health, and well being of NASA and contractor employees as well as property and equipment. This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

Alternate I (Dec 1988)

As prescribed by 1823.7004(f), delete the first sentence of the basic clause and substitute the following:

The apparently successful offeror shall submit a detailed safety and health plan after notification of selection but before contract award, showing how the contractor intends to protect the life, health, and well being of NASA and contractor employees as well as property and equipment.

1852.225-71 Nondomestic construction materials.

As prescribed in 1825.205-70, insert the following clause:

Nondomestic Construction Materials (Dec 1988)

The requirements of the Buy American Act--Construction Materials clause do not apply to the following construction materials or components: [List articles of materials and supplies.]

(End of clause)

1852.225-72 Offer in English language and U.S. dollars.

As prescribed in 1825.407, insert the following provision:

Offer in English Language and U.S. Dollars (Dec 1988)

Offers submitted in response to this solicitation shall be in the English language and in U.S. dollars.

(End of provision)

1852.225-73 Duty-free entry supplies.

As prescribed in 1825.605-70, insert the following clause:

Duty-Free Entry Supplies (Dec 1988)

In accordance with the Duty-Free Entry clause of this contract, the following supplies will be given duty-free entry:

[Insert the supplies that are to be accorded duty-free entry.]

(End of clause)

1852.225-74 NASA Domestic Preference Certificate.

As prescribed in 1825.7105, insert the following provision:

NASA Domestic Preference Certificate (Apr 1989)

(a) For purposes of this provision, the following definitions apply:

Code country, as used in this subpart, means a country that is a signatory to the Agreement on Government Procurement (the "Procurement Code"). The Code countries are Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Hong Kong, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Singapore, Sweden, Switzerland, and United Kingdom.

Code country end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Code country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such (see FAR 25.401).

Components, as used in this provision, means those articles, materials, and supplies incorporated directly into the end products.

Domestic firm, as used in this provision, means a business entity that is organized under the laws of the United States and that conducts business operations in the United States.

Domestic product means the final product of a domestic firm that will be completely assembled in the United States and of which, when completely assembled, not less than 50 percent of the cost of all the components will be domestically incurred.

Foreign firm, as used in this provision, means a business entity other than a domestic firm.

Foreign product, as used in this provision, means a product other than a domestic product.

(b) The offeror certifies that it is [ ] is not [ ] a domestic firm.

(c) The offeror certifies that (1) each final product, except those listed below, will be completely assembled in the United States and (2) when completely assembled, not less than 50 percent of the cost of all the components of the final product will be domestically incurred.

Foreign products (also specify if a product is a Code-country, Canadian, or Israeli end product):

(End of provision)

[55 FR 12178, Apr. 2, 1990; 55 FR 38808, Sept. 21, 1990]

1852.225-75 NASA Domestic Preference.

As prescribed in 1825.7105, insert the following clause:

NASA DOMESTIC PREFERENCE (APR 1989)

(a) The NASA domestic preference (Pub. L. 100-147, 101 Stat. 866) provides that NASA give preference to domestically produced and assembled final products of domestic firms.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Domestic firm means a business entity that is organized under the laws of the United States and that conducts business operations in the United States.

Foreign firm means a business entity that is not a domestic firm.

(b) The contractor, if certified as a domestic firm, shall deliver only the final product of a domestic firm that will be completely assembled in the United States and of which, when completely assembled, not less than 50 percent of the cost of all the components will be domestically incurred.

(End of clause)

[55 FR 12178, Apr. 2, 1990; 55 FR 38808, Sept. 21, 1990]

1852.227-11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed at 1827.373(a), modify the clause at FAR 52.227-11 by adding the following subparagraph (5) to paragraph (f) of the basic clause. In addition, use the following subparagraph (2) in lieu of subparagraph (g)(2) of the basic clause:

(5) The contractor shall provide the contracting officer the following:

(i) A listing every 12 months (or such longer period as the contracting officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a coinventor.

(End of addition)

(2) The contractor shall include the clause in the NASA FAR Supplement at 1852.227-70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.

(End of substitution)

[55 FR 27089, June 29, 1990]

1852.227-14 Rights in Data—General.

As prescribed in 1827.409(e), add the following subparagraph (3) to paragraph (d) of the basic clause at FAR 52.227-14:

(3) The Contractor agrees not to establish claims to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(End of addition)

[55 FR 27089, June 29, 1990]

1852.227-19 Commercial Computer Software—Restricted Rights.

(a) As prescribed in 1827.409(f), add the following paragraph (e) to the basic clause at FAR 52.227-19:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar informtaion regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contract Technical Representative/User may sign any vendor supplied agreements, registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth in this clause or elsewhere in this contract/purchase order.

(End of addition)

(b) As prescribed in 1827.409(g), add the following paragraph (f) to the basic clause at FAR 52.227-19:

(f) Subject to paragraphs (a) through (e) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(End of addition)

[55 FR 27090, June 29, 1990]

1852.227-70 New technology.

As prescribed in 1827.373(b), insert the following clause:

NEW TECHNOLOGY (APR 1988)

(a) *Definitions.*

Administrator, as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

Contract, as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, as used in this clause, means conception or first actual reduction to practice; *provided*, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Nonprofit organization, as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Reportable item, as used in this clause, means any invention, discovery, improvement, or innovation of the Contractor, whether or not the same is or may be patentable or otherwise protectible under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

Small business firm, as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used.)

Subject invention, as used in this clause, means any reportable item which is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(b) *Allocation of principal rights*—(1) *Presumption of title*. (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) *Waiver of rights.* (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) *Minimum rights reserved by the Government.* (1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR part 1245, subpart 2, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with 14 CFR 1245.211, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Contractor agrees, subject to section 27.302(i), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions. (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2) of this clause, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of paragraph (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 53631, Dec. 29, 1989]

1852.227-71 Requests for waiver of rights to inventions.

As prescribed in 1827.373(d), insert the following provision in all solicitations that include the clause at 1852.227-70, New Technology:

REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS (APR 1984)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected contractor. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific section or sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Contracting Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Contracting Officer of the Administrator's determination. The Contracting Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Contracting Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

(End of provision)

1852.227-72 Designation of new technology representative and patent representative.

As prescribed in 1827.373(e), insert the following clause:

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (APR 1984)

(a) For purposes of administration of the clause of this contract entitled "New Technology" or "Patent Rights—Retention by the Contractor (Short Form)," whichever is included, the following named representatives are hereby designated by the Contracting Officer to administer such clause:

Title	Office code	Address (including zip code)
	New Technology Representative Patent Representative	

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a "New Technology" clause or "Patent Rights—Retention by the Contractor (Short Form)" clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.375-3 of the NASA FAR Supplement.

(End of clause)

1852.227-84 Patent Rights Clauses.

The contracting officer shall insert the following provision as prescribed in 1827.373(f):

PATENT RIGHTS CLAUSES (DEC 1989)

This solicitation contains the patent rights clauses of FAR 52.227-11 (as modified by the NFS) and NFS 1852.227-70. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227-70 shall not apply. If the award is to other

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than a small business or nonprofit organization, the clause at FAR 52.227-11 shall not apply.

(End of Provision)

[54 FR 53671, Dec. 29, 1989]

1852.227-85 Invention reporting and rights—foreign.

As prescribed in 1827.373(c)(1), insert the following clause:

INVENTION REPORTING AND RIGHTS—FOREIGN (APR 1986)

(a) As used in this clause, the term "invention" means any invention, discovery or improvement, and "made" means the conception or first actual demonstration that the invention is useful and operable.

(b) The Contractor shall report promptly to the Contracting Officer each invention made in the performance of work under this contract. The report of each such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration the full right, title and interest in and to each such invention throughout the world, except for the State in which this contract is to be performed. As to such State, Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration only an irrevocable, nontransferable, nonexclusive, royalty-free license to practice each such invention by or on behalf of the United States of America or any foreign government pursuant to any treaty or agreement with the United States of America, provided that Contractor within a reasonable time files a patent application in that State for each such invention. Where Contractor does not elect to file such patent application for any such invention in that State, full right, title and interest in and to such invention in that State shall reside in the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(d) The Contractor agrees to execute or to secure the execution of such legal instruments as may be necessary to confirm and to protect the rights granted by paragraph (c) of this clause, including papers incident to the filing and prosecution of patent applications.

(e) Upon completion of the contract work, and prior to final payment, Contractor shall submit to the Contracting Officer a final report listing all inventions reportable under this contract or certifying that no such inventions have been made.

(f) In each subcontract, the Contractor awards under this contract where the performance of research, experimental design, engineering, or developmental work is contemplated, the Contractor shall include this clause and the name and address of the Contracting Officer.

(End of clause)

1852.227-86 Commercial computer software—licensing.

As prescribed in 1827.409(h), insert the following clause:

COMMERCIAL COMPUTER SOFTWARE—LICENSING (DEC 1987)

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) of this clause. Where the vendor/contractor proposes its standard commercial software license, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the NASA FAR Supplement, including the restricted rights in paragraph (d) of this clause, are incorporated into and made a part of this purchase order/contract.

(b) Although the vendor/contractor may not propose its standard commercial software license until after this purchase order/contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this purchase order/contract under the same terms and conditions as in paragraph (a) of this clause. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any agreement, license, or registration form or card and return it directly to the vendor/contractor; however, such signing shall not alter any of the terms and conditions of this clause.

(c) The vendor's/contractor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor/contractor has unconditionally accepted the terms and conditions set forth in this clause, and that such terms and conditions (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The commercial computer software may not be used, reproduced, or disclosed by the Government except as provided below or otherwise expressly stated in the purchase order/contract.

(2) The commercial computer software may be—

(i) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraph (a) or (b) of this clause;

(ii) Reproduced for safekeeping (archives) or backup purposes;

(iii) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(iv) Disclosed and reproduced for use by Government contractors or their subcontractors in accordance with the restricted rights in paragraphs (d)(2) (i), (ii), and (iii) of this clause; provided they have the Government's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

(3) If the incorporated vendor's/contractor's software license contains provisions or rights that are less restrictive than the restricted rights in paragraph (d)(2) of this clause, then the less restrictive provisions or rights shall prevail.

(4) If the computer software is published, copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the rights in paragraphs (d) (2) and (3) of this clause.

(5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in paragraphs (d) (2), (3), and (4) of this clause.

End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990]

1852.227-87 Transfer of Technical Data Under Space Station International Agreements.

As prescribed at 1827.670-2, insert the following clause:

TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENT (APR 1989)

1. In the cooperative Space Station Freedom program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR) to transfer such data.

2. The Contractor agrees, when specifically directed in writing by the Contracting Officer, or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by the Contracting Officer or designated representative.

3. It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with paragraph 2 of this clause, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.

4. Nothing contained in this clause affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the Rights in Data clause of this Contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that clause.

5. The Contractor agrees to include this clause, including this paragraph 5, in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

(End of clause)

[54 FR 39375, Sept. 26, 1989]

1852.228-70 Aircraft ground and flight risk.

As prescribed in 1828.370, insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of "aircraft" should be modified to specify that the aircraft has reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of "in the open" may be modified to include "hush houses," test hangers, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

AIRCRAFT GROUND AND FLIGHT RISK (DEC 1988)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, and in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes—

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; *provided* that an engine or a portion of a wing or a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after acceptance Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, in the process of installation in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) "In the open" means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in Contractor's possession, care, custody, or control.

(3) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; *provided, however,* that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) "Operation" means operations and tests, other than on any production line, of aircraft, not in flight, whether or not the aircraft is in the open or in motion during them and includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) "Contractor's managerial personnel" means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant or separate location at which this contract is performed or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 a.m. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (3) of this clause, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk shall not extend to damage to or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) To the extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from inherent vice in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or de-

struction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to or loss or destruction of aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft in the open or during operation resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to or loss or destruction of aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to or loss or destruction of the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to or loss or destruction of aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either (i) require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage or (ii) terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If, in the alternative, this contract is terminated under this paragraph (i) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines: (i) That it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

1852.228-71 Aircraft flight risks.

(a) As prescribed in 1828.311-270, insert the following clause:

AIRCRAFT FLIGHT RISKS (DEC 1988)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not: (1) Be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to seaplanes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been reengaged to any launching platform or device.

(3) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c) (1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract shall be made: (i) In the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

1852.228-72 Interparty waiver of liability during STS operations.

As prescribed in 1828.371, insert the following clause:

INTERPARTY WAIVER OF LIABILITY DURING STS OPERATIONS (DEC 1988)

(a) The Contractor undertakes the obligations of, agrees to be bound by, and shall receive the protection and benefits of a NASA contractor under the no-fault, no-subrogation interparty waiver of liability provision with users for Space Shuttle services, to the extent provided for and reprinted in paragraph (d) of this clause.

(b) This interparty waiver of liability shall not apply to damage caused by: (1) NASA to the Contractor's employees or property or (2) the contractor to NASA's employees or property.

(c) This clause, including this paragraph (c), shall be included in all subcontracts under this contract under which work is to be performed in support of STS operations.

(d) The applicable definitions and the no-fault, no-subrogation interparty waiver of liability provision contained in NASA agreements with users for Space Shuttle services provide in relevant part as follows:

1. General.

a. (Paragraph a. of the Shuttle Launch Agreement has been intentionally omitted since it is not relevant.)

b. For purpose of this (Shuttle Launch) Agreement, the following definitions shall be applicable:

(1) *Liability* shall include payments made pursuant to United States' treaty, any judgment by a court of competent jurisdiction, administrative and litigation costs, and, after consultation with the User, settlement payments.

(2) *Damage* shall mean bodily injury to or death of any person, damage to, or loss of any property, and loss of revenue or profits or other direct, indirect, or consequential damages arising therefrom.

2. (Paragraph 2 of the Shuttle Launch Agreement has been intentionally omitted since it is not relevant.)

3. Damage to Persons or Property Involved in STS Operations.

a. For purposes of this Paragraph 3., the following definitions shall be applicable:

(1) *STS Operations* shall mean:

(a) All Space Transportation System activity;

(b) All Payload activity;

(c) All tangible personal property (including ground support, test, training and simulation equipment) related to paragraph(d) 3.a.(1) (a) and (b) of this clause;

(d) Research, design, development, test, manufacture, assembly, integration, transportation, or use of any materials related to paragraph (d)3.a.(1) (a), (b) or (c) of this clause.

(e) Performance of any services related to paragraph (d)3.a.(1) (a) through (d) of this clause.

(2) *Protected STS Operations* shall mean a period of time during which STS Operations are being performed as follows:

(a) Beginning with the signature of an Agreement or Arrangement with NASA for Space Transportation System services and (i) when any employee, Payload or property arrives at a United States Government Installation, or (ii) during transportation of such to the installation by a United States Government conveyance, or (iii) at ingress of such into an Orbiter, for the purpose of fulfilling such Agreement or Arrangement, whichever occurs first.

(b) Ending with regard to any employee when the employee departs: (i) A United States Government Installation, or (ii) the Orbiter if it lands at other than such Installation, or (iii) a United States Government conveyance which transports the employee from such Installation or Orbiter, whichever occurs last.

(c) Ending with regard to a Payload or property, not Jettisoned or Deployed, under the same conditions as set forth in subparagraph (d)3.a.(2)(b) of this clause.

(d) Ending with whichever occurs last with regard to a Deployed or Jettisoned payload or property (i) after such impacts the Earth; or (ii) if retrieved by the Orbiter, under the same conditions set forth in subparagraph (d)3.a.(2)(b) of this clause.

b. NASA and the User (the parties) will respectively utilize their property and employees in STS Operations in close proximity to one another and to others. Furthermore, the parties recognize that all participants in STS Operations are engaged in the common goal of meaningful exploration, exploitation and uses of outer space. In furtherance of this goal, the parties hereto agree to a no-fault, no-subrogation, interparty waiver of liability pursuant to which each party agrees not to bring a claim against or sue the other party or other users and agrees to absorb the financial and any other consequences for Damage it incurs to its own property and employees as a result of participation in STS Operations during Protected STS Operations, irrespective of whether such Damage is caused by NASA, the User, or other users participating in STS Operations, and regardless of whether such Damage arises through negligence or otherwise. Thus, the parties, by absorbing the consequences of damage to their property and employees without recourse against each other or other users participating in STS Operations during Protected STS Operations, jointly contribute to the common goal of meaningful exploration of outer space.

c. The parties agree that this common goal will also be advanced through extension of the interparty waiver of liability to other participants in STS operations. Accordingly, the parties agree to extend the waiver as set forth in paragraph (d)3.b. of this clause to contractors and subcontractors at every tier of the parties and other users, as third party beneficiaries, whether or not such contractors or subcontractors causing damage bring property or employees to a United States Government Installation or retain title to or other interest in property provided by them to be used, or otherwise involved, in STS Operations. Specifically, the parties intend to protect these contractors and subcontractors from claims, including "products liability" claims, which might otherwise be pursued by the parties, or the contractors or subcontractors of the parties, or other users or the contractors or subcontractors of other users. Moreover, it is the intent of the parties that each will take all necessary and reasonable steps in accordance with paragraph (d)3.e. of this clause to foreclose claims for Damage by any participant in STS Operations during Protected STS Operations, under the same conditions and to the same extent as set forth in paragraph (d)3.b. of this clause, except for claims between the User and its contractors or subcontractors and claims between the United States Government and its contractors and subcontractors.

d. The parties intend that the interparty waiver of liability set forth in paragraphs (d)3. b. and c. of this clause be broadly construed to achieve the intended objec-tives.

e. NASA will require all Space Transportation system users entering into Launch and Associated Services Agreements with NASA after December 1, 1982, to agree to the interparty waiver of liability as set forth in paragraphs 3.b. and 3.c. of this clause. The User, and each other user, will require the following to agree to the waiver of liability set forth in paragraph (d)3.c. of this clause:

(i) All persons and entities to whom it assigns all or part of its right to Launch and Associated Services; (ii) any person or entity to whom it has sold or leased or otherwise agreed to provide all or any portion of its Payload or Payload services prior to the completion of NASA's launch services for a particular Payload; (iii) all its prime contractors; and (iv) all its subcontractors who will have persons or property involved in STS Operations during Protected STS Operations. NASA will require all the following to agree to the waiver of liability set forth in paragraph (d)3.c. of this clause:

(i) All its prime contractors; and (ii) all its subcontractors who will have persons or property involved in STS operations during Protected STS Operations. Furthermore, NASA has required all STS users entering into Launch and Associated Services Agreements prior to December 1, 1982, to agree to a more limited waiver of liability, a copy of which is available from NASA upon request. Failure of any party to obtain a waiver agreement required above shall not affect such party's right to the protections otherwise provided by this paragraph (d)3.

(End of clause)

1852.228-73 Bid Bond.

As prescribed in 1828.101-70, insert the following provision:

BID BOND (OCT 1988)

(a) Each bidder shall submit with its bid a bid bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in Federal Acquisition Regulation clause 52.228-1, in the amount of twenty percent (20%) of the bid price, or $3 million, whichever is the lower amount.

(b) Bid bonds shall be dated the same date as the bid or earlier.

(End of provision)

1852.228-74 Payment and performance bonds.

As prescribed in 1828.102-70, insert the following provision:

PAYMENT AND PERFORMANCE BONDS (DEC 1988)

Unless the resulting contract is for $25,000 or less, the successful bidder will be required to furnish payment and performance bonds to the Contracting Officer as follows:

(a) *Performance Bonds:* (Standard Form 25)

(1) The penal amount of performance bonds shall be 100 percent of the original contract price.

(2) The Government may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) *Payment Bonds:* (Standard Form 25-A)

(1) The penal amount of payment bonds shall equal—

(i) 50 percent of the contract price if the contract price is not more than $1 million;

(ii) 40 percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) $2.5 million if the contract price is more than $5 million.

(2) If the original contract price is $5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection as revised shall meet the requirement of paragraph (a)(1) of this clause.

(3) The government may secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all bonds, including any necessary reinsurance agreements, to the Contracting Officer before starting work. Performance and payment bonds shall be dated the same date as the contract award date; or, in the case of any additional bond protection required, the same date as the contract modification date.

(d) Surety companies acceptable to the Government are identified by the Department of Treasury and listed in the FEDERAL REGISTER.

(End of provision)

1852.228-75 Minimum insurance coverage.

As prescribed in 1828.372, insert the following clause:

MINIMUM INSURANCE COVERAGE (OCT 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least $100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least $500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury liability and $20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

"The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy."

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

1852.228-76 Cross-waiver of liability Space Station activities.

As prescribed in 1828.373, insert t
following clause:

CROSS-WAIVER OF LIABILITY FOR SPACE
STATION ACTIVITIES (FEB 1989)

(a) The objective of this clause is to est
lish a cross-waiver of liability in the inter
of encouraging participation in the explo
tion, exploitation, and use of outer sp
through the Space Station. This cro
waiver of liability should be broadly co
strued to achieve this objective.

(b) For purposes of this clause:

(1) The term "the Contractor" means t
person or entity who is a party to this co
tract, other than the United States Gover
ment and NASA.

(2) The term "damage" means:

(i) Bodily injury to, or other impairme
of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use
any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect or consequenti
damage.

(3) The term "launch vehicle" means
object (or any part thereof) intended f
launch, launched from Earth, or returni
to Earth which carries payloads or perso
or both.

(4) The term "Partner State" means t
Governments of Belgium, Canada, De
mark, France, Italy, the Federal Republic
Germany, Japan, Netherlands, Norwa
Spain, and the United Kingdom of Gre
Britain and Northern Ireland. It includes
Cooperating Agency of a Partner State a
the National Space Development Agency
Japan. (The currently designated Coopera
ing Agencies are the Ministry of State f
Science and Technology of Canada, the E
ropean Space Agency and the Science a
Technology Agency of Japan.)

(5) The term "payload" means all prope
ty to be flown or used on or in a launch v
hicle or the Space Station.

(6) The term "Protected Space Ope
ations" means all launch vehicle activitie
Space Station activities, and payload activ
ties on Earth, in outer space, or in trans
between Earth and outer space related t
Space Station. It includes, but is not limite
to:

(i) Research, design, development, tes
manufacture, assembly, integration, ope
ation, or use of launch or transfer vehicle
(for example, the Orbital Maneuvering V
hicle), the Space Station, or a payload,
well as related support equipment and facil
ties and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

"Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

(7) The term "related entity" means:

(i) A contractor or subcontractor of a Partner State, of the United States Government or of the Contractor, at any tier;

(ii) A user or customer of a Partner State or of the United States Government, at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Partner State or of the United States Government, at any tier.

The terms "contractors" and "subcontractors" include suppliers of any kind.

(8) The term "Space Station" means all the elements listed in the Annex to the Space Station Intergovernmental Agreement signed on September 29, 1988, including any capability added to Space Station through evolution as provided in that Agreement.

(c) The United States Government shall require (1) each Partner State; (2) each related entity of a Partner State; and (3) except as provided for in paragraph (h)(1) of this clause, each related entity of the United States Government; to agree, by contract or otherwise, to waive all claims, based on damage arising out of Protected Space Operations, against: (i) The Contractor; (ii) the Contractor's contractors or subcontractors at any tier; and (iii) the employees of the Contractor or the employees of the Contractor's contractors or subcontractors at any tier.

(d) In consideration for the cross-waiver set forth in paragraph (c) of this clause, the Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims, based on damage arising out of Protected Space Operations, against (1) each Partner State; (2) each related entity of a Partner State; (3) except as provided for in paragraph (h)(1) of this clause, each related entity of the United States Government; and (4) except as provided for in paragraph (h)(1) of this clause, the employees of any of the entities identified in paragraphs (d)(1) through (3) of this clause.

(e) In addition, the Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (d) of this clause to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims, based on damage arising out of Protected Space Operations, against the entities or persons identified in paragraphs (d)(1) through (d)(4) of this clause, except as provided for in paragraph (h)(1) of this clause.

(f) This cross-waiver in paragraphs (c), (d), and (e) of this clause shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver in paragraphs (c), (d), and (e) of this clause applies to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract.

(g) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(h) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(1) Claims between (i) the United States Government and the Contractor or between the United States Government and the Contractor's contractors or subcontractors at any tier; (ii) between the Contractor and its related entities; or (iii) between the Contractor's related entities;

(2) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(3) Claims for damage caused by willful misconduct; and

(4) Intellectual property claims.

(i) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(j) This clause, including this paragraph (j), shall be included in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties, where the work is to be performed in support of Protected Space Operations.

(End of clause)

1852.228-77 Reimbursement for war-hazard losses.

As prescribed in 1828.309, insert the following clause:

REIMBURSEMENT FOR WAR-HAZARD LOSSES (DEC 1988)

(a) The Contractor's costs for assuming liability for employee protection against war-hazard risks pursuant to paragraph (b) of the Worker's Compensation and War-Hazard Insurance Overseas clause shall be an allowable cost under this contract, subject to the following:

(1) The Contractor shall submit proof-of-loss files to support payment or denial of each claim.

(2) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the Contracting Officer extends the time, the Contractor shall convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump-sum payment. Subject to approval by the Contracting Officer, the Contractor shall then obtain necessary release documents and settle the claim by lump-sum arrangement, taking into account any payments previously made.

(3) As to any potential claim that is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made and giving the results of the investigation, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(4) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title, and interest of the Contractor to any refund, rebate, or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in any manner it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence that appears to give rise to a claim under this portion of the contract, (1) perform any investigations that may be appropriate and (2) promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of that claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed whose cost or expense may be reimbursable to the Contractor under this clause. The Contractor shall render full assistance to the Government in connection with any third-party suit or claim relating to this clause or its subject matter that the Government elects to prosecute or defend in its own behalf.

(End of clause)

1852.232-75 Security for advance payments.

As prescribed in 1832.412, insert the following clause:

SECURITY FOR ADVANCE PAYMENTS (MAR 1989)

During the period of time that advance payments may be made under this contract and so long as they remain unliquidated, the Contractor shall not mortgage, pledge or otherwise encumber, or permit to be encumbered, any of the Contractor's assets now owned or hereafter acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor that are allocated to the performance of this contract and with respect to which the Government has a lien under this contract, without the Contracting Officer's prior written consent.

(End of clause)

1852.232-77 Limitation of funds (fixed-price contract).

As prescribed in 1832.705-270(a), insert the following clause. Contracting officers are authorized, in appropriate cases, to revise clause paragraphs (a), (b), and (g) to specify the work required under the contract, in lieu of using contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

LIMITATION OF FUNDS (FIXED-PRICE CONTRACT) (MAR 1989)

(a) Of the total price of items ___ through ___, the sum of $___ is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

SCHEDULE FOR ALLOTMENT OF FUNDS

Date	Amounts

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until ____.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimated date when the point referred to in paragraph (c)(2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in paragraph (c)(3)(ii) of this clause, additional funds are not allotted by the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a). This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

1852.232-79 Payment for on-site preparatory costs

As prescribed in 1832.111-70, insert the following clause:

PAYMENT FOR ON-SITE PREPARATORY COSTS
(SEPT 1987)

Costs associated with on-site preparatory work (start-up or set-up costs) will be prorated over all work activities of a Critical Path Method (CPM) network or Progress Chart against which progress payments will be sought. Separate payment for on-site preparatory costs will not be made by the Government.

(End of clause)

1852.232-80 Date of incurrence of costs.

As prescribed in 1832.705-270(b), insert the following clause:

DATE OF INCURRENCE OF COSTS (MAR 1989)

The Contractor shall be entitled to reimbursement for costs incurred on or after ______ in an amount not to exceed $ ______ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

1852.232-81 Contract funding.

As prescribed in 1832.705-270(c), insert the following clause:

CONTRACT FUNDING (JUN 1990)

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is $______. This allotment is for [Insert applicable item number(s), task(s), or work description] ______ and covers the following estimated period of performance: ______.

(b) An additional amount of $ ______ is obligated under this contract for payment of fee.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990]

1852.232-82 Submission of requests for progress payments.

As prescribed in 1832.502-470, insert the following clause:

SUBMISSION OF REQUESTS FOR PROGRESS PAYMENTS (MAR 1989)

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

1852.235-70 Scientific and technical information service.

As prescribed in 1835.070(a), insert the following clause:

SCIENTIFIC AND TECHNICAL INFORMATION SERVICE (MAR 1989)

(a) The Contractor should make the fullest practicable use of the services provided by the NASA Scientific and Technical Information Facility (STIF) during the conduct of research under this contract. The Contractor, if not already registered with STIF, is encouraged to register by executing express registration forms that will (1) be provided by STIF and (2) inform the Contractor of the products and services available in support of work under the contract.

(b) NASA reserves the right, if any scientific and technical information requested is unavailable, to so notify the Contractor. NASA's failure to furnish any information requested shall not entitle the Contractor to an equitable adjustment.

(End of clause)

1852.235-71 Key personnel and facilities.

As prescribed in 1835.070(b), insert the following clause:

KEY PERSONNEL AND FACILITIES (MAR 1989)

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; *provided*, that the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

(End of clause)

1852.235-72 Plan for new technology reporting.

As prescribed in 1835.070(c), insert the following provision:

PLAN FOR NEW TECHNOLOGY REPORTING (MAR 1989)

The Offeror shall, in the proposal in response to this solicitation, provide estimates of the cost and manpower requirements to perform the new technology reporting required by the clause at 1852.227-70, New

Technology, which is to be included in any resulting contract. In addition, if selected for negotiation, the Offeror will be required to submit for approval before contract execution a detailed plan setting forth the manner in which the Offeror will meet the new technology reporting requirements of the New Technology clause. This plan shall, at a minimum—

(a) Identify the specific areas of technical effort that are considered likely to generate new technology;

(b) Describe the means by which project supervisory and technical personnel will be advised of the responsibilities, details, and benefits of new technology reporting;

(c) Describe the procedures to be established, maintained, and followed for reviewing the effort to be undertaken for the purposes of identification and reporting (disclosure) of new technology within the time periods and in the manner prescribed by the New Technology clause;

(d) Describe the procedure for timely submission of the interim and final new technology reports required by the New Technology clause;

(e) Describe the procedures for (1) selecting either NASA's New Technology clause or another patent rights clause for inclusion in subcontracts having as a purpose the conduct of experimental, developmental, research, design, or engineering work, and (2) providing prompt notification of either the award of such subcontracts or a subcontractor's refusal to accept the clause; and

(f) Identify the individual(s) assigned substantial and specific responsibilities for ensuring compliance with the requirements of the New Technology clause, as well as their qualifications and organizational placement to discharge these responsibilities.

(End of provision)

1852.236-71 Additive or deductive items.

As prescribed in 1836.370(a), insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (MAR 1989)

(a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of $100,000, a bidder's base bid of $85,000, and four successive additives of $10,000, $8,000, $6,000, and $4,000. In this example, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed $100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

1852.236-72 Bids with unit prices.

As prescribed in 1836.370(b), insert the following provision:

BIDS WITH UNIT PRICES (MAR 1989)

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

1852.236-73 Hurricane plan.

As prescribed in 1836.570-1, insert the following clause:

HURRICANE PLAN (DEC 1988)

In the event of a hurricane warning, the Contractor shall—

(a) Inspect the area and place all materials possible in a protected location;

(b) Tie down, or identify and store, all outside equipment and materials,

(c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and

(d) Ensure that temporary erosion controls are adequate.

(End of clause)

1852.236-74 Magnitude of requirement.

As prescribed in 1836.570-2, insert the following provision:

MAGNITUDE OF REQUIREMENT (DEC 1988)

The Government estimated price range of this project is between $______ and $______. [Insert the estimated dollar range.]

(End of provision)

1852.237-70 Emergency evacuation procedures.

As prescribed at 1837.110-70, insert the following clause:

EMERGENCY EVACUATION PROCEDURES (DEC 1988)

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 39376, Sept. 26, 1989]

1852.242-70 Technical direction.

As prescribed in 1842.7001, insert the following clause:

TECHNICAL DIRECTORY (MAR 1989)

(a) Performance of the work under this contract is subject to the written technical direction of the Contracting Officer Technical Representative (COTR), who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement 1842.270. "Technical direction" means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instruction purporting to be technical direction that—

(1) Constitutes an assignment of additional work outside the statement of work;

(2) Constitutes a change as defined in the changes clause;

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COTR.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) of this clause, the Contractor shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receiving it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the Contractor in writing within 30 days that the instruction or direction is—

(1) Rescinded in its entirety; or

(2) Within the scope of the contract and does not constitute a change under the changes clause of the contract, and that the Contractor should proceed promptly with its performance.

(e) A failure of the contractor and contracting officer to agree that the instruction or direction is both within the scope of the contract and does not constitute a change under the changes clause, or a failure to agree upon the contract action to be taken with respect to the instruction or direction, shall be subject to the Disputes clause of this contract.

(f) Any action(s) taken by the contractor in response to any direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.

(End of clause)

1852.242-71 Travel outside of the United States.

As prescribed in 1842.7002(a), insert the following clause:

TRAVEL OUTSIDE OF THE UNITED STATES (DEC 1988)

(a) The Contracting Officer must authorize in advance and in writing travel to locations outside of the United States by Contractor employees that is to be charged as a cost to this contract. This approval may be granted when the travel is necessary to the efforts required under the contract and it is otherwise in the best interest of NASA.

(b) The Contractor shall submit requests to the Contracting Officer at least 30 days in advance of the start of the travel.

(c) The Contractor shall submit a travel report at the conclusion of the travel. The Contracting Officer's approval of the travel will specify the required contents and distribution of the travel report.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990]

1852.242-72 Observance of Legal Holidays.

As prescribed in 1842.7003(a), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS (SEPT 1989)

(a) The on-site Government personnel observe the following holidays:

New Year's Day
Labor Day
Martin Luther King, Jr.'s Birthday
Columbus Day
Washington's Birthday
Veterans Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day

Any other day designated by Federal statute, Executive Order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

(End of clause)

ALTERNATE I (SEPT 1989)

As prescribed in 1842.7003(b), add the following paragraphs (c) and (d) as Alternate I to the clause.

(c) On-site personnel assigned to this contract shall not be granted access to the installation during the holidays in paragraph (a) above, except as follows: the Contractor shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative. If the Contractor's on-site personnel work during a holiday other than those in paragraph (a) above, no form of holiday or other premium compensation shall be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work that would have been overtime regardless of the status of the day as a holiday.

(d) The Contractor shall place identical requirements, including this paragraph, in all subcontracts that require performance of work on-site, unless otherwise instructed by the Contracting Officer.

ALTERNATE II (SEPT 1989)

As prescribed in 1842.7003(c), add the following paragraphs (e) and (f):

(e) When the NASA installation grants administrative leave to its Government employees (e.g., as a result of inclement weather, potentially hazardous conditions, or other special circumstances), Contractor personnel working on-site should also be dismissed. However, the contractor shall provide sufficient onsite personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative.

(f) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (e) of this clause, it shall be without loss to the Contractor. The cost of salaries and wages to the Contractor for the period of any such excused absence shall be a reimbursable item of cost under this contract for employees in accordance with the Contractor's established accounting policy.

[54 FR 39376, Sept. 26, 1989]

1852.243-70 Engineering Change Proposals.

As prescribed in 1843.205-70, insert the following clause with any appropriate alternates:

ENGINEERING CHANGE PROPOSALS (MAR 1989)

(a) The Contracting Officer may, at any time, request in writing that the Contractor prepare and submit an engineering change proposal (ECP), as that term is defined in DOD-STD-480A. Upon receiving this request, the Contractor shall submit to the Contracting Officer the information specified by, and in the format required by, paragraph 4.6 of DOD-STD-480A.

(b) The ECP shall include a "not-to-exceed" price and delivery adjustment, or a "not-less-than" price and delivery adjustment, acceptable to the Contractor if the Government subsequently orders the proposed change. If the change is ordered, the equitable adjustment to the contract shall not be greater than the "not-to-exceed" or less than the "not-less-than" amount. This paragraph (b) does not preclude revision or correction of an ECP in accordance with paragraphs 4.10 and 4.11 of DOD-STD-480A. Concurrent with the submission of any ECP under this contract, the Contractor shall, in accordance with FAR 15.804-6, submit to the Contracting Officer a completed Standard Form 1411, Contract Pricing Proposal Cover Sheet. At the time of agreement upon the price of the ECP, the Contractor shall, in accordance with 15.804-2 and 15.804-4, submit to the Contracting Officer a signed Certificate of Current Cost or Pricing Data.

(End of clause)

ALTERNATE I (MAR 1989)

As prescribed in 1843.205-70(b), add the following paragraph (c) to the basic clause.

(c) If the price adjustment proposed for any Contractor-originated ECP (excluding any Government-requested ECP or value engineering change proposal) is ________ [Insert percent of contract price or dollar value.] or less, the change shall be made at no adjustment to the contract price.

ALTERNATE II (MAR 1989)

As prescribed in 1843.205-70(b) substitute the following sentence for the second sentence in paragraph (b) of the basic clause.

Change orders issued in accordance with the changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the contract Schedule, in the absence of a statement in the change order or other contract modification increasing the estimated cost.

1852.244-70 Geographic participation in the aerospace program.

As prescribed in 1844.170, insert the following clause:

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (APR 1985)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of $100,000 and over.

(End of clause)

1852.245-70 Acquisition of centrally reportable equipment.

As prescribed in 1845.106-70(a), insert the following clause:

ACQUISITION OF CENTRALLY REPORTABLE EQUIPMENT (MAR 1989)

(a) "Centrally reportable equipment," as used in this clause, means plant equipment special test equipment (including components), special tooling, and non-flight space property (including ground support equipment) (1) generally commercially available and used either as a separate item or as a component of a system, (2) having an acquisition cost of $1,000 or more (unless a lower threshold is specified elsewhere in this contract), and (3) is identifiable by a manufacturer and model number.

(b) (1) Before acquiring (including acquiring by fabricating) any item of centrally reportable equipment under this contract (unless for incorporation into flight-qualified or flight-monitoring deliverable end items), the Contractor shall provide to the Contracting Officer, at the earliest possible date, a description of the item sufficiently detailed to enable screening of existing Government inventories.

(2) For this purpose, the Contractor shall (i) prepare a separate DD Form 1419, DOD Industrial Plant Equipment Requisition, for each item of centrally reportable equipment to be acquired and (ii) forward it through the Contracting Officer to the NASA Equipment Management System (NEMS) Coordinator at the cognizant NASA installation at least 30 days in advance of the date the Contractor intends to acquire or begin fabricating the item. If a certificate of non-availability is not received within that period, the Contractor may proceed to acquire the item, subject to any other applicable provisions of this contract. Instructions for preparing the DD Form 1419 are contained in NASA FAR Supplement 1845.7103. The same data may be provided in an alternate format when requesting other than Defense Industrial Plant Equipment Center (DIPEC) controlled items.

(3) Upon receiving the item described on the DD Form 1419 (regardless of whether it is Contractor-acquired or Government-furnished), the Contractor shall prepare and submit a DD Form 1342 or equivalent data in accordance with NASA FAR Supplement 1845.505-670.

(End of clause)

1852.245-71 Installation-provided government property.

As prescribed in 1845.106-70(b), insert the following clause:

INSTALLATION-PROVIDED GOVERNMENT PROPERTY (MAR 1989)

(a) In performance of work under this contract, certain Government property identified in the contract shall be made available to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. Under this clause, the Government retains accountability for as well as title to the property, and the Contractor assumes user responsibilities prescribed in the installation property management directives listed elsewhere in this contract.

(b) (1) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation's Supply and Equipment Management and Financial Management Officers. However, the Government will provide the Contractor a record of all items of such property, including copies of all transaction documents used to describe changes to this record. The Contractor shall maintain this record and transaction documentation in such a condition that, at any stage of completion of work under this contract, the status of the property, including location, utilization, consumption rate, and identification, can be readily ascertained.

(2) The Contractor shall also adhere to all other procedures (and be subject to sanctions related to those procedures) prescribed by the installation's director that have been established for the management of installation property. The records and documentation shall be made available, upon request, to the installation's Supply and Equipment Management Officer and any other formally designated representatives of the Contracting Officer.

(c) If the Government fails to provide the Government property specified in this contract and that failure adversely affects the Contractor's ability to perform the contract, the Contracting Officer shall, upon timely written request from the Contractor, (1) make a determination of the effect on the Contractor and (2) equitably adjust the contract in accordance with the procedure provided in the FAR 52.243 changes clause of this contract. Equitable adjustments made pursuant to this paragraph (c), however, shall not include adjustments in fee, unless the property to be provided was described in specific quantities of specific items.

(d) Government property made available under this clause shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract, except as provided in paragraphs (a), (b), and (c) of this clause and as may otherwise be provided in this contract with respect to (1) the Contractor's responsibilities for repair and maintenance of Government property, or (2) the Contractor's liability for any loss of or damage to such property that is attributable to the Contractor's failure to maintain and administer a program for maintenance and repair in accordance with sound industrial practice.

(End of clause)

ALTERNATE I (MAR 1989)

As prescribed in 1845.106-70(b)(3), insert the following as paragraph (b)(3) of the basic clause:

(3) The contractor shall not utilize the installation's central receiving facility for receipt of Contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a quarterly basis, to the Contracting Officer and the Supply and Equipment Management Officer.

1852.245-72 Liability for government property furnished for repair or other services.

As prescribed in 1845.106-70(c), insert the following clause:

LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (MAR 1989)

(a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as "Government property furnished for servicing," shall not be subject to any clause of this contract entitled Government-Furnished Property or Government Property

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss or destruction of or damage to the Government property furnished for servicing: (1) Caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances, or (2) sustained while the property is being worked upon and directly resulting from that work, including, but not limited to, any repairing, adjusting, inspecting, servicing, or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for servicing resulting from any other cause except to the extent that the loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for servicing, the amount and coverage of which the Contractor agrees to maintain, the Contractor further agrees to obtain any additional insurance covering such loss, destruction, or damage that the Contracting Officer may from time to time require. The requirements for this additional insurance shall be effected under the procedures established by the FAR 52.243 changes clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

1852.245-73 Financial reporting of government-owned/contractor-held property.

As prescribed in 1845.106-70(d), insert the following clause (note that when the clause is used with its Alternate I or Alternate II, the word "annually" in paragraph (a) must be replaced by "monthly" or "quarterly," as appropriate):

FINANCIAL REPORTING OF GOVERNMENT-OWNED/CONTRACTOR-HELD PROPERTY (MAR 1989)

(a) The Contractor shall prepare and submit annually a NASA Form 1018, Report of Government-Owned/Contractor-Held Property, in accordance with 1845.505-14 and the instructions on the form and in section 1845.7101 of the NASA FAR Supplement, except that the reporting of space hardware shall be required only as directed in clause 1852.245-78, Space Hardware Reporting, of this contract, if applicable.

(b) If administration of this contract has been delegated to the Department of Defense, the original and three copies of NASA Form 1018 shall be submitted through the DOD Property Administrator to the NASA office identified below. If the contract is administered by NASA, the forms shall be submitted directly to the following NASA office: ________ [Insert the address and office code of the organization within the cognizant NASA installation responsible for control and distribution of the NF 1018.]

(c) The annual reporting period shall be from July 1 of each year to June 30 of the following year. The report shall be submitted by July 31.

(d) The Contractor agrees to insert this reporting requirement in all first-tier subcontracts, except that the requirement shall provide for the submission of the subcontractors' reports to the Contractor, not to the Government. The Contractor shall require the subcontractors' reports to be submitted in sufficient time to meet the reporting date in paragraph (c) of this clause.

(e) The Contractor's report shall consist of a consolidation of the subcontractors' reports and the Contractor's own report.

(End of clause)

ALTERNATE I (MAR 1989)

As prescribed in 1845.106-70(d), insert the following paragraph (c) for paragraph (c) of the basic clause and modify paragraph (a) accordingly:

(c) The monthly report is due no later than the last day of the month following the month being reported.

ALTERNATE II (MAR 1989)

As prescribed in 1845.106-70(d), insert the following paragraph (c) for paragraph (c) of the basic clause and modify paragraph (a) accordingly:

(c) The quarterly report is due no later than the last day of the month following the quarter being reported.

1852.245-74 Contractor Accountable On-Site Government Property.

As prescribed in 1845.106-70(e), insert the following clause:

CONTRACTOR ACCOUNTABLE ON-SITE GOVERNMENT PROPERTY (MAR 1989)

(a) In performance of work under this contract, certain Government property identified in the contract shall be provided to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. The Contractor assumes accountability and user responsibilities for the property.

(b) Government property provided shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract. In addition, the contractor is responsible for managing this property in accordance with the guidelines provided by the installation's Supply and Equipment Management Officer or any other formally designated representatives of the Contracting Officer. The guidelines include but are not limited to requiring the Contractor to—

(1) Use economic order quantity (EOQ) methods for routine stock replenishment;

(2) Utilize the Federal Cataloging System;

(3) Comply with shelf-life requirements;

(4) Provide for accountability and control (using the NASA Equipment Management System (NEMS)) of all equipment costing $1000 and over, plus that equipment designated as "sensitive";

(5) Provide for physical inventory of all controlled equipment at least every 3 years;

(6) Provide for sample inventories of materials plus complete inventories every 5 years;

(7) Conduct walk-through utilization inspections;

(8) Screen NEMS before acquiring any equipment costing $1000 or over, plus equipment designated by the installation as sensitive and costing $500 and over;

(9) Support the Equipment Acquisition Document (EAD) process; and

(10) Use Government sources as the first source of supply.

(c) Data requirements relating to the guidelines in paragraph (b) above are specified under section F, Deliveries or performance.

(End of clause)

1852.245-75 Title to equipment.

As prescribed in 1845.106-70(f), insert the following clause:

TITLE TO EQUIPMENT (MAR 1989)

(a) In accordance with the FAR 52.245 Government property clause of this contract, title to equipment and other tangible personal property acquired by the Contractor with funds provided for conducting research under this contract and having an acquisition cost less than $_____ [Insert a dollar value not less than $5,000] shall vest in the Contractor upon acquisition, provided that the Contractor has complied with the requirements of the FAR 52.245 Government property clause.

(b) Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer a list of all equipment with an acquisition cost of $_____ [Insert the dollar value specified in paragraph (a)] or more acquired under the contract during the contract period. The list shall include a description, manufacturer and model number, date acquired, cost, and condition information, and shall be submitted within 30 calendar days after completion or termination of the contract, in accordance with Federal Acquisition Regulation subsection 45.606-5.

(c) Title to the property specified in paragraph (b) of this clause vests in the Contractor, but the Government retains the right to direct transfer of title to property specified in paragraph (b) of this clause to the Government or to a third party within 180 calendar days after completion or termination of the contract. Such transfer shall not be the basis for any claim by the Contractor.

(d) Title to all Government-furnished property remains vested with the Government (see the FAR 52.245 Government property clause).

(e) Title to the contractor-acquired property listed below shall vest with the Government.

[List any contractor-acquired property for which vesting of title with the Government is appropriate or insert "None".]

(End of clause)

1852.245-76 List of Government-furnished property.

As prescribed in 1845.106-70(g), insert the following clause:

LIST OF GOVERNMENT-FURNISHED PROPERTY (OCT 1988)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment _____ [Insert attachment number or "not applicable"] of this contract on a no-charge-for-use basis. The Contractor shall use this property in the performance of this contract at _____ [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer. Under the FAR 52.245 Government property clause of this contract, the Contractor is accountable for the identified property.

Item	Quantity	Acquisition cost	Date to be furnished to the contractor

[Insert a description of the item(s), quantity, acquisition cost, and date the property will be furnished to the Contractor]

(End of clause)

1852.245-77 List of installation-provided property and services.

As prescribed in 1845.106-70(h), insert the following clause:

LIST OF INSTALLATION-PROVIDED PROPERTY AND SERVICES (MAR 1989)

In accordance with the Installation-provided Government Property clause of this contract, the Contractor is authorized use of the types of property and services listed below, to the extent they are available, while on-site at the NASA installation.

(a) Office space, work area space, and utilities. The Contractor shall use Government telephones for official purposes only. Pay telephone stations are available for the convenience and use of employees in making unofficial calls, both local and long distance.

(b) General- and special-purpose equipment, including office furniture.

(1) Equipment to be made available to the Contractor for use in performance of this contract on-site and at such other locations as approved by the Contracting Officer is listed in Attachment ______ [Insert attachment number or "not applicable" if no equipment is provided]. The Government retains accountability for this property under the Installation-Provided Government Property clause, regardless of its authorized location.

(2) If the Contractor acquires property as a direct cost under this contract, this property also shall become accountable to the Government upon its entry into the NASA Equipment Management System (NEMS) in accordance with the property reporting requirements of this contract.

(3) The Contractor shall not bring on-site for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(c) Supplies from stores stock.

(d) Publications and blank forms stocked by the installation.

(e) Safety and fire protection for Contractor personnel and facilities.

(f) Installation service facilities: ______

[Insert the name of the facilities or "None"].

(g) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(h) Cafeteria privileges for Contractor employees during normal operating hours.

(i) Building maintenance for facilities occupied by Contractor personnel.

(j) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services shall be provided on-site, as approved by the Contracting Officer.

(k) The responsibilities of the Contractor as contemplated by paragraph (a) of the Installation-Provided Government Property clause are defined in the following property management directives and installation supplements to these Directives:

(1) NHB 4200.1, NASA Equipment Management Manual.

(2) NHB 4200.2, NASA Equipment Management System (NEMS) User's Guide for Property Custodians.

(3) NHB 4300.1, NASA Personal Property Disposal Manual.

(4) NHB 4100.1, NASA Materials Inventory Management Manual.

(End of clause

1852.245-78 Space hardware reporting.

As prescribed in 1845.106-70(i), insert the following clause:

SPACE HARDWARE REPORTING (MAR 1989)

In accordance with the Financial Reporting of Government-Owned/Contractor-Held Property clause of this contract, the reporting of certain specified items of space hardware is required on a NASA Form 1018, Report of Government-Owned/Contractor-Held Property. The reporting of space hardware is in addition to the requirements of other property reporting on the form. At present, the items of space hardware to be reported are the following: ______ [Insert the space hardware to be reported for the particular contract]. The Contracting Officer shall update this list prior to June 1 of each year to be applicable beginning with the next reporting period.

(End of clause)

1852.245-79 Use of Government-owned property.

As prescribed in 1845.106-70(j), insert the following provision:

USE OF GOVERNMENT-OWNED PROPERTY (MAR 1989)

(a) The offeror ( ) does, ( ) does not intend to use in performance of any contract awarded as a result of this solicitation existing Government-owned facilities (real property or plant equipment), special test equipment, or special tooling (including any property offered by this solicitation). The offeror shall identify any offered property not intended to be used. If the offeror does intend to use any of the above items, the offeror must furnish the following information required by Federal Acquisition Regulation (FAR) 45.205(b), NASA FAR Supplement (NFS) 1845.102-70, and NFS 1845.104(b):

(1) Identification and quantity of each item. Include the item's acquisition cost if it is not property offered by this solicitation.

(2) For property not offered by this solicitation, identification of the Government contract under which the property is accountable and written permission for its use from the cognizant Contracting Officer.

(3) Amount of rent, calculated in accordance with FAR 45.403 and the clause at FAR 52.245-9, Use and Charges, unless the property has been offered on a rent-free basis by this solicitation.

(4) The dates during which the property will be available for use, and if it is to be used in more than one contract, the amounts of respective uses in sufficient detail to support proration of the rent. This information is not required for property offered by this solicitation.

(b) The offeror ( ) does, ( ) does not request additional Government-provided property for use in performing any contract awarded as a result of this solicitation. If the offeror requests additional Government-provided property, the offeror must furnish—

(1) Identification of the property, quantity, and estimated acquisition cost of each item; and

(2) The offeror's written statement as prescribed by FAR 45.302-1(a)(4).

(c) If the offeror intends to use any Government property (paragraph (a) or (b) of this clause), the offer must also furnish the following:

(1) The date of the last Government review of the offeror's property control and accounting system, actions taken to correct any deficiencies found, and the name and telephone number of the cognizant property administrator.

(2) A statement that the offeror has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR Subpart 45.5, and NFS subparts 1845.5, 1845.70, and 1845.71.

(3) A statement indicating whether or not the costs associated with subparagraph (c)(2) of this clause, including plant clearance and/or plant reconversion costs, are included in its cost proposal.

(End of provision)

1852.245-80 Use of Government production and research property on a no-charge basis.

As prescribed in 1845.106-70(k), insert the following clause:

USE OF GOVERNMENT PRODUCTION AND RESEARCH PROPERTY ON A NO-CHARGE BASIS (MAR 1989)

In performing this contract the Contractor is authorized to use on a no-charge, noninterference basis the Government-owned production and research property provided to the Contractor under the contract(s) specified below and identified in the cognizant Contracting Officer's letter approving use of the property. Use is authorized on the basis that it will not interfere with performance of the Government contract(s) under which the property was originally furnished. Use shall be in accordance with the terms and conditions of these contracts and the cognizant Contracting Officer's approval letter.

Contract No(s): [Insert the contract number(s) under which the Government property is accountable].

(End of clause)

1852.246-70 Space Transportation System (STS) Personnel Reliability Program.

As prescribed in 1846.270(a), insert the following clause:

SPACE TRANSPORTATION SYSTEM (STS) PERSONNEL RELIABILITY PROGRAM (MAR 1989)

(a) In implementation of the STS Personnel Reliability Program, described in NASA Management Instruction (NMI) 3610.13, the Government shall identify personnel positions that are mission critical. Some of the positions as identified may now or in the future be held by employees of the Contractor. Upon notification by the Contracting Officer that a mission-critical position is being or will be filled by one or more of the Contractor's employees, the Contractor shall (1) provide the affected employees with a clear understanding of the investigative and medical requirements and, (2), to the extent permitted by applicable law, assist the Government by furnishing personal data and medical records.

(b) The standard that will be used in certifying individuals for a mission-critical position is that they must be determined to be competent and reliable in the performance of their assigned duties in accordance with the screening requirements of the NMI. If the Government determines that a Contractor employee occupying or nominated to occupy a mission-critical position will not be certified for such duty, the Contracting Officer shall (1) furnish to the employee the specific reasons for its action; (2) advise the employee that he/she may avail himself/herself of the review procedures that are a part of the certification system; and (3) furnish him/her a copy of those procedures upon request.

(c) If a Contractor employee who has been nominated for (but has not yet filled) a mission-critical position is not certified, the Contractor agrees to defer the appointment to the position until the employee has had an opportunity to pursue the referenced procedures. If the employee is an incumbent to the position, the Contractor agrees, upon the request of the Government, to remove him/her from the position temporarily pending an appeal of the action under the review procedures. If any employee not certified elects not to take action under the procedures, or, if having taken action, is not successful in obtaining a reversal of the determination, the Contractor agrees not to appoint the employee to the position, or if already appointed, to promptly remove the employee.

(End of clause)

1852.246-71 Government contract quality assurance functions.

As prescribed in 1846.470-2(a), insert the following clause:

GOVERNMENT CONTRACT QUALITY ASSURANCE FUNCTIONS (OCT 1988)

In accordance with the inspection clause of this contract, the Government intends to perform the following functions at the locations indicated:

Item	Quality assurance Function	Location

[Insert the items involving quality assurance, the quality assurance functions, and where the functions will be performed]

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 19, 1990]

1852.246-72 Material inspection and r ceiving report.

As prescribed in 1846.674, insert th following clause:

MATERIAL INSPECTION AND RECEIVING REPOR (OCT 1988)

(a) At the time of each delivery under th contract, the Contractor shall furnish to th Government a Material Inspection and Receiving Report (DD Form 250 series) prepared in ___ [Insert number of copies, including original] copies, an original and __ copies [Insert number of copies].

(b) The Contractor shall prepare the DI Form 250 in accordance with NASA FAI Supplement 1846.672-1. The Contracto shall enclose the copies of the DD Form 25 in the package or seal them in a waterproo envelope, which shall be securely attache to the exterior of the package in the mos protected location.

(c) When more than one package is involved in a shipment, the Contractor shal list on the DD Form 250, as additional information, the quantity of packages and th package numbers. The Contractor shall forward the DD Form 250 with the lowes numbered package of the shipment an print the words "CONTAINS DD FORM 250" on the package.

(End of clause)

1852.246-73 Manned space flight item.

As prescribed in 1846.270(b), insert the following clause:

MANNED SPACE FLIGHT ITEM (OCT 1988)

The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontractual level:

For use in manned space flight; materials, manufacturing, and workmanship of highest quality standards are essential to astronaut safety.

If you are able to supply the desired item with a higher qualilty than that of the items specified or proposed, you are requested to bring this fact to the immediate attention of the purchaser.

(End of clause)

1852.246-74 Requirement for Quality and Productivity Improvement Plan.

As prescribed in 1846.470-1, insert the following provision:

REQUIREMENT FOR QUALITY AND PRODUCTIVITY IMPROVEMENT PLAN (JUN 1990)

The offeror shall submit with its proposal a Quality and Productivity Improvement (Q/PI) plan. The plan should address only effort directly related to this solicitation. It should include areas of focus for improvement; Q/PI goals, schedules and assessment techniques; discuss how the offeror will create an environment within its organization conducive to continuous quality improvement; and discuss the offeror's active or proposed involvement, if any, in the Q/PI programs of subcontractors. The offeror shall identify all costs associated with the major elements of the proposed plan. The offeror may propose incentives to reward quality and productivity improvements made under the contract. If proposed as incentives that are distinct from other contract fees or prices, the offeror must be able to demonstrate to the contracting officer's satisfaction that the contractor's performance under the Q/PI plan can be discretely measured and its value is commensurate with the proposed cost or incentive. At the sole discretion of the contracting officer any consideration for the proposed Q/PI plan may be included in the total fee or price of the contract. If the contract will otherwise contain award fee provisions, the offeror shall include in its proposal appropriate award fee criteria designed to encourage and reward the offeror's Q/PI effort. The contractor shall comply with the approved plan during performance of the contract.

(End of provision)

[55 FR 27090, June 29, 1990]

1852.246-75 Quality and Productivity Improvement Plan.

As prescribed in 1846.470-2(b), insert the following clause:

QUALITY AND PRODUCTIVITY IMPROVEMENT PLAN (JUN 1990)

During contract performance, the contractor shall comply with the Quality and Productivity Improvement Plan submitted pursuant to provision 1852.246-74, Requirement for Quality and Productivity Improvement Plan, as approved by the Contracting Officer.

(End of clause)

[55 FR 27090, June 29, 1990]

1852.247-70 Returnable containers.

As prescribed in 1847.305-70(a), insert the following clause:

RETURNABLE CONTAINERS (MAR 1989)

(a) Containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of 30 days after their delivery to the f.o.b. point specified in the contract. Beginning with the first day after this loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of $____ [Insert dollar amount for container rental.] per container per day, regardless of type or capacity.

(b) This rental charge will be computed separately for containers of each type, size, and capacity, and for each delivery point named in the contract. A credit of 30 container days will accrue to the Government for each container, regardless of type or capacity, delivered by the Contractor. A debit of 1 container day will accrue to the Government for each container for each day after delivery to the f.o.b. point specified in the contract. At the end of the contract, if the debit total exceeds the credit total, rental shall be charged for the difference. If the credit total equals or exceeds the debit total, no rental shall be charged. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) of this clause.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay the Contractor the replacement value as follows, less the allocable rental paid for that container:

[Insert the container types, sizes, capacities, and associated replacement values.]

(d) Containers lost or damaged beyond repair and paid for by the Government shall become Government property, subject to the following: If any lost container is located within ____ [Insert number of calendar days.] calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay the Government the replacement value, less rental computed in accordance with paragraph (a) of this clause, beginning at the expiration of the loan period specified in paragraph (a) of this clause, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 39376, Sept. 26, 1989]

1852.247-71 Protection of the Florida Manatee.

As prescribed in 1847.7001, insert the following clause:

PROTECTION OF THE FLORIDA MANATEE (MAR 1989)

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93-205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92-522), the Florida Manatee (Trichechus Manatus) has been designated an endangered species, and the Banana and Indian Rivers within and adjacent to NASA's Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work, and selected disassembly functions shall be provided training relative to (1) habits and characteristics of the Florida Manatee, (2) provisions of the applicable laws, (3) personal liability of workers under the laws, and (4) operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and vessels shall be operated at minimum controllable speeds in all KSC waters. Shallow water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooperate with the USFWS by allowing access at reasonable times and places (including shipboard) to USFWS personnel, and by making available such contractor personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transportation Coordination Center, Kennedy Space Center, Florida, telephone (407) 867-5330.

(2) For all other personnel, through the Systems Training and Employee Development Branch, Code PM-TNG, telephone (407) 867-2737.

(e) The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

(End of clause)

1852.247-72 Advance Notice of Shipment.

As prescribed in 1847.305-70(b), insert the following clause:

ADVANCE NOTICE OF SHIPMENT (OCT 1988)

______ [Insert number of work days] work days prior to shipping item(s) ______ [Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to ______ [Insert individual(s) to receive notification] and to the Contracting Officer.

(End of clause)

1852.247-73 Shipment by Government bills of lading.

As prescribed in 1847.305-70(c), insert the following clause:

SHIPMENT BY GOVERNMENT BILLS OF LADING (MAR 1989)

(a) The Contractor shall ship items deliverable under this contract, if the transportation cost per shipment exceeds $100, by Government bills of lading (GBLs). At least 15 days before shipment, the Contractor shall request in writing GBLs from: ______ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: ______ [Insert appropriate telephone number] Requests for GBLs shall include the following information.

(1) Item identification/description.
(2) Origin and destination.
(3) Individual and total weights.
(4) Dimensions and total cubic footage.
(5) Total number of pieces
(6) Total dollar value.
(7) Other pertinent data.

(b) The Contractor shall prepay transportation charges of $100 or less per shipment. The Government shall reimburse the contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a certificate as described below must be completed, signed by an authorized company representative, and attached to the invoice.

I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: ______
Destination: ______

(End of clause)

1852.249-72 Termination (utilities).

As prescribed in 1849.505-70, insert the following clause. The period of 30 days may be varied not to exceed 90 days.

TERMINATION (UTILITIES) (MAR 1989)

The Government, at its option, may terminate this contract by giving written notice not less than 30 days in advance of the termination's effective date.

(End of clause)

1852.250-70 Indemnification under Public Law 85-804—NASA Contracts.

As prescribed at 1850.403-370(a)(1), insert the following clause:

INDEMNIFICATION UNDER PUBLIC LAW 85-804—NASA CONTRACTS (SEPT 1989)

(a) "Principal officials," as used in this clause, means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business, or

(2) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.).

(b) Pursuant to Pub. L. 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, as amended, and notwithstanding any other provisions of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against—

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

(2) Loss of or damage to property of the Contractor, and loss of its use, but excluding loss of profit; and

(3) Loss of, damage to, or loss of use of Government property but excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) Arises out of or results from a risk defined in this contract to be unusually hazardous and (2) is not compensated by insurance or otherwise. Any such claim, loss, or damage within deductible amounts of the Contractor's insurance shall not be covered under this clause.

(d)(1) The Government shall not be liable for—

(i) Claims by the United States (other than those arising through subrogation) against the Contractor;

(ii) Losses affecting the property of the Contractor; when the claim, loss, or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, or principal officials; or

(iii) Loss of, damage to, or loss of use of property of the Contractor unless the total amount for such loss, damage, and loss of use, excluding loss of profit, is in excess of the Contractor's insurance or $500,000,000. Specifically, the Government shall only be liable for such loss, damage, and loss of use in excess of the Contractor's insurance or $500,000,000, whichever is the larger amount.

(2) The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless that assumption of liability has been specifically authorized by the Administrator and approved by the Contracting Officer. When the Government has assumed liability for subcontracts, the term "Contractor" in this paragraph (d) shall include subcontractors.

(e) No payment shall be made by the Government under this clause unless its amount shall first have been certified to be just and reasonable by the Administrator or the Administrator's representative designated for this purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph (e) by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(f)(1) With the Contracting Officer's prior written approval, the Contractor may include in any subcontract under this contract the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract as unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions.

(2) Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor covered by this clause and shall entitle the Government, at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to its obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer.

(3) The Government may discharge its obligations under this paragraph (f) by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(g) If insurance coverage or other financial protection approved by the Administrator is reduced, the Government's liability under this clause shall not be increased by reason of such reduction.

(h) The Contractor shall: (1) Promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor that reasonably may be expected to involve indemnification under this clause, (2) furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form required by the Government, and (3) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, control, or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions and execute any authorizations required in regard to that settlement or defense.

(End of clause)

Alternate I (Mar 1989)

If the contract is a cost-reimbursement contract, substitute the following paragraphs (h) and (i) for paragraph (h) of the basic clause:

(h) In addition to the Contractor's responsibilities under the Insurance--Liability to Third Persons clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall: (1) Promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor that reasonably may be expected to involve indemnification under this clause, (2) furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form required by the Government, and (3) to the extent required by the Government, permit and authorize the Government to direct, control or assist in the settlement or defense of any such claim or action. The cost of insurance (including self-insurance) covering a risk defined in this contract as unusually hazardous shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the Insurance—Liability to Third Persons clause.

(i) The Limitation of Cost and Limitation of Funds clauses of this contract do not apply to the Government's obligations under this clause. These obligations shall be excepted from the release required under the allowable cost and payment clause of this contract.

[54 FR 28340, July 5, 1989, as amended at 54 FR 39376, Sept. 26, 1989]

1852.250-72 Space activity—unusually hazardous risks.

As prescribed in 1850.403-370(b), insert the following clause:

Space Activity—Unusually Hazardous Risks (Mar 1989)

The risks for which indemnification is authorized as "unusually hazardous" under the Indemnification Under Pub. L. 85-804—NASA Contracts clause of this contract are solely those resulting from or arising out of the use or performance of the following products or services in NASA's space activities (for this purpose, their use or performance begins only when they are provided to the U.S. Government at a U.S. Government installation for one or more Shuttle launches and are actually used or performed in NASA's space activities):

(a) Provision of Space Transportation System (STS) and cargo flight elements or components.

(b) Provision of STS and cargo ground support equipment or components.

(c) Provision of STS and cargo ground control facilities and services for their operation.

(d) Repair, modification, overhaul, and other support and services relating to the STS, its cargo, and other elements used in NASA's space activities.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 53632, Dec. 29, 1989; 55 FR 38808, Sept. 21, 1990]

1852.252-70 Compliance with NASA FAR supplement.

As prescribed in 1852.107-70, insert the following clause:

Compliance With NASA FAR Supplement (Mar 1989)

Any statements in this contract requiring compliance with specific provisions of the Federal Acquisition Regulation (e.g., subpart 45.5) shall be construed to require compliance also with any corresponding implementing or supplementing provisions in the NASA FAR Supplement in effect on the date of this contract.

(End of clause)

PART 1853—FORMS

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1853.246 Quality assurance (DD 250, DD 250c).
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AUTHORITY: 42 U.S.C. 2473 (c)(1).

SOURCE: 54 FR 28371, July 5, 1989, unless otherwise noted.

Subpart 1853.1—General

1853.100 Scope of subpart.

This subpart contains requirements and information generally applicable to the forms prescribed in this regulation.

1853.101 Requirements for use of forms.

The requirements for use of the forms prescribed or referenced in this part are contained in parts 1801 through 1851, where the subject matter applicable to each form is addressed. The specific location of each form's prescription is identified in subpart 1853.2.

1853.102 Current editions.

The form prescriptions in subpart 1853.2 and the illustrations in subpart 1853.3 contain current editions, unless otherwise noted. Contracting officers shall use the current editions unless otherwise authorized under this regulation.

1853.103 Exceptions.

Alteration of any NASA or NASA-adopted form prescribed by this regulation is prohibited unless prior approval has been obtained from the NASA Forms Officer (Code NTD-1) (through the Installation Forms Manager), who will coordinate the request with the Office of Procurement, Code H. Use for the same purpose of any form other than one prescribed by this regulation requires prior approval of the cognizant Code H Division. Requests for exceptions to standard or optional forms, as prescribed in FAR 53.103, shall be forwarded through the Installation Forms Manager and the NASA Forms Officer to the Procurement Policy Division, Code HP, which will take the appropriate actions in FAR 53.103.

1853.104 Overprinting.

NASA and other forms may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any other way. Exception approval for overprinting is not needed.

1853.105 Computer preparation.

NASA and NASA-adopted forms prescribed by this regulation may be adapted for computer preparation by following the exception procedures in 1853.103. (See FAR 53.105 regarding standard and optional forms.) Such forms should correspond exactly with all other specifications pertaining to them, including overall size, wording, and arrangement.

1853.106 Special construction and printing.

Contracting offices may request exceptions to NASA and NASA-adopted and standard and optional forms for special construction and printing by following the procedures of 1853.103.

1853.107 Obtaining forms.

(a) NASA installations and offices may obtain forms prescribed in the FAR or in this Regulation from Goddard Space Flight Center, Code 853.9. Orders should be placed on a NASA Form 2, Request for Blank Forms, Publications and Issuances, in accordance with NHB 1420.2, and the forms obtained from GSFC as required by installation or office.

(b) Contracting officers, at the time of contract award, shall ensure that contractors are notified of or are otherwise aware of:

(1) The procedures for obtaining NASA forms; and

(2) The source within the installation of forms required for performance under the contract.

1853.108 Recommendations concerning forms.

Coordination with the FAR Secretariat, as specified in FAR 53.108, is the responsibility of the Procurement Policy Division, Code HP.

Subpart 1853.2—Prescription of Forms

1853.200 Scope of subpart.

This subpart summarizes the prescriptions of NASA forms and other forms adopted by NASA for use in acquisition. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of this regulation in which the form usage requirements are addressed. (See FAR 53.200 for an example.)

1853.204 Administrative matters.

1853.204-70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 533M, 533P, 533Q, 667, 1098, 1356, 1611, and 1612 and DD Form 1593).

(a) *NASA Form 507, Individual Procurement Action Report (New Awards).* NASA Form 507, prescribed at 1804.671-4, shall be used to provide acquisition records and statistics for new awards.

(b) *NASA Form 507A, Individual Procurement Action Report (New Awards) Supplement A.* NASA Form 507A, prescribed at 1804.671-4, shall be used to provide additional data to that provided on the NASA Form 507 for new awards.

(c) *NASA Form 507B, Individual Procurement Action Report Supplement B.* NASA Form 507B, prescribed at 1804.674, shall be used to provide contract cost, fee, and obligation data for new awards and modifications.

(d) *NASA Form 507G, Individual Procurement Action Report (Grants/Orders).* NASA Form 507G, prescribed at 1804.671-4, shall be used to provide acquisition records and statistics for grants, agreements, intragovernmental awards, and orders against Federal Supply Schedule contracts.

(e) *NASA Form 507M, Individual Procurement Action Report (Modifications).* NASA Form 507M, prescribed at 1804.671-4, shall be used to provide acquisition records and statistics for modifications to contracts, grants, agreements, intragovernmental awards, and orders against Federal Supply Schedule contracts.

(f) *NASA Form 533M, Monthly Contractor Financial Management Report.* NASA Form prescribed at 1804.675, shall be used when financial management reporting is required.

(g) *NASA Form 533P, Monthly Contractor Financial Management Performance Analysis Report.* NASA Form 533P, prescribed at 1804.675, shall be used when monthly performance analysis reports are required.

(h) *NASA Form 533Q, Quarterly Contractor Financial Management Report.* NASA Form 533Q, prescribed at 1804.675, shall be used when quarterly cost projection reports are required.

(i) *NASA Form 667, Report on NASA Subcontracts.* NASA Form 667, prescribed at 1804.6 -, shall be used by contractors to submit information to NASA on each subcontract or subcontract modification over $10,000.

(j) *NASA Form 1098, Checklist for Contract Award File Content.* NASA

Form 1098, prescribed at 1804.803-71, shall be used as a guide in compiling contract files and shall accompany contracts and supplemental agreements submitted to Headquarters for approval.

(k) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* NASA Form 1356, prescribed at 1804.7202, shall be used to report information applicable to colleges and universities.

(l) *NASA Form 1611, Contract Completion Statement.* NASA Form 1611, prescribed at 1804.804-2, shall be used for closeout of contract files by an office other than the one administering the contract.

(m) *NASA Form 1612, Contract Closeout Checklist.* NASA Form 1612, prescribed at 1804.804-5, shall be used for contract closeout when the NASA contracting office retains contract administration.

(n) *DOD Form 1593, Contract Administration Completion Record.* DD Form 1593, prescribed at 1804.804-5, shall be used for closeout when the NASA contracting office retains contract administration.

[54 FR 53632, Dec. 29, 1989]

1853.207 Acquisition planning (NASA Forms 1451, 1452).

(a) NASA Form 1451, Request for Procurement Plan Approval. NASA Form 1451, prescribed at 1807.170-1(a), shall be used in preparing procurement plans requiring approval by Headquarters.

(b) NASA Form 1452, Signature Page (Installation). NASA Form 1452, prescribed at 1806.304(a) and 1807.170-1(a), shall be used in obtaining installation-level signatures required by 1806.304 and 1807.103.

1853.208 Required sources of supplies and services.

1853.208-70 Other Government sources (Standard Form 1080, Air Force Form 858, Department of Energy Form 5400.3, Nuclear Regulatory Commission Form 313).

(a) *Standard Form 1080, Voucher for Transfers Between Appropriations and/or Funds (Disbursement).* Standard Form 1080, prescribed at 1808.002-74(e), shall be used to reimburse the Air Force for shipments of propellants.

(b) *Air Force Form 858, Forecast of Requirements (Missile Propellants and Pressurants).* AF 858, prescribed at 1808.002-74(f), shall be used to report periodic estimated requirements for missile propellants and related items to the Department of the Air Force.

(c) *Department of Energy Form 5400.3, Isotope Order Blank.* DOE Form 5400.3, prescribed at 1808.002-72(a), shall be used for the procurement of radioisotopes.

(d) *Nuclear Regulatory Commission Form 313, Application for Material License.* NRC Form 313, prescribed at 1808.002-72(a), shall be used to apply for a NRC license for the procurement of radioisotopes.

1853.215 Contracting by negotiation.

1853.215-2 Price negotiation (NASA Form 634).

NASA Form 634, Structured Approach—Profit/Fee Objective. NASA Form 634, prescribed at 1815.970, shall be used for determining the profit or fee objective by the structured approach.

[54 FR 28371, July 5, 1989, as amended at 55 FR 27090, June 29, 1990]

1853.216 Types of contracts.

1853.216-70 Assignees under cost-reimbursement contracts (NASA Forms 778, 779, 780, 781).

(a) *NASA Form 778, Contractor's Release.* NASA Form 778, prescribed at 1816.370, shall be used for obtaining a release from the contractor.

(b) *NASA Form 779, Assignee's Release.* NASA Form 779, prescribed at 1816.370, shall be used for obtaining a release from each assignee.

(c) *NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.* NASA Form 780, prescribed at 1816.370, shall be used in obtaining any refunds, rebates, credits, or other amounts from the contractor.

(d) *NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.* NASA Form 781, prescribed at 1816.370, shall be used in obtaining any refunds, rebates, credits, or other amounts due from each assignee.

1853.217 Special contracting methods (NASA Form 523).

NASA Form 523, NASA-Defense Purchase Request. NASA Form 523, prescribed at 1817.70, shall be used for requesting procurement of supplies or services from all activities of the Military Departments.

1853.227 Patents, data, and copyrights (NASA Form 1626).

NASA Form 1626, Report Documentation Page. NASA Form 1626, prescribed at 1827.474(b)(2)(i)(D), shall be submitted with contractors' reports.

1853.232 Contract financing (Standard Form 272, 272A).

(a) Standard Form 272, Federal Cash Transactions Report, prescribed at 1832.406-70, will be submitted by nonprofit organizations that receive advance funding.

(b) Standard Form 272-A, Federal Cash Transactions Report Continuation, prescribed at 1832.406-70, is used in conjunction with Standard Form 272 when reporting more than one contract.

1853.242 Contract administration.

1853.242-70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433).

(a) *NASA Form 1430, Letter of Contract Administration Delegation, General.* NASA Form 1430, prescribed at 1842.202-70(a)(4), shall be used to delegate and redelegate contract administration functions and to amend existing contract administration delegations.

(b) *NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions.* NASA Form 1430A, prescribed at 1842.202-70(a)(4), shall be used to supplement NASA Form 1430 when special instructions are necessary.

(c) *NASA Form 1431, Letter of Acceptance of Contract Administration Delegation.* NASA Form 1431, prescribed at 1842.202-70(a)(8), shall be used in conjunction with NASA Form 1430 to record receipt and acceptance of delegation by other agencies.

(d) *NASA Form 1432, Letter of Contract Administration Delegation, Termination.* NASA Form 1432, prescribed at 1842.202(a)(2)(i), shall be used to delegate and redelegate termination functions and to amend existing termination delegations.

(e) *NASA Form 1433, Letter of Audit Delegation.* NASA Form 1433, prescribed at 1842.202-71(c), shall be used to delegate and redelegate audit functions and to amend existing audit delegations.

(f) *NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation.* NASA Form 1634, prescribed at 1842.270(b), shall be used to designate a COTR for a particular contract.

1853.242-71 Administrative service request (NASA Form 1434).

NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services. NASA Form 1434, prescribed at 1842.202-70(f), shall be used to request contract administration and audit services incident to preaward of a contract but exclusive of preaward surveys.

1853.242-72 Notifications (NASA Form 456).

NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. NASA Form 456, prescribed at 1842.803, will be used by the auditor and contracting officer to notify the contractor of any suspended and/or disallowed contract costs.

1853.245 Property (NASA Form 1018, Department of Defense Form 1342, and Department of Defense Form 1419).

(a) *NASA Form 1018, Report of Government-owned/Contractor-Held Property.* NASA Form 1018, prescribed at 1845.505-14(d), shall be used by contractors for reporting Government-owned property.

(b) *Department of Defense Form 1342, DOD Property Record.* DD Form 1342, prescribed at 1845.505-670, shall be used by contractors for reporting NASA-furnished or contractor-acquired centrally reportable equipment.

(c) *Department of Defense Form 1419, DOD Industrial Plant Equipment Requisition.* DD Form 1419, prescribed by the clause at 1852.245-70, shall be used by contractors to list requirements for centrally reportable items for screening of existing Government inventories.

1853.246 Quality Assurance (Department of Defense Form 250, Department of Defense Form 250c).

(a) *Department of Defense Form 250, Material Inspection and Receiving Report.* DD Form 250, prescribed at 1846.670, shall be used to document procurement quality assurance, acceptance of supplies and services, and shipments.

(b) *Department of Defense Form 250c, Material Inspection and Receiving Report-Continuation Sheet.* DD Form 250c, prescribed at 1846.670, shall be used to continue documentation of information from DD Form 250.

1853.249 Termination of contracts (NASA Forms 1412, 1413).

(a) *NASA Form 1412, Termination Authority.* NASA Form 1412, prescribed at 1849.101-71, shall be used for initiating action to terminate a contract for either default or convenience of the Government.

(b) *NASA Form 1413, Termination Docket Checklist.* NASA Form 1413, prescribed at 1849.101-71, shall be used to ensure adequacy of termination records.

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 1870—NASA SUPPLEMENTARY REGULATIONS

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Subpart 1870.4—NASA Credit Card System

1870.401 Purpose.
1870.402 System content.
1870.403 NASA procedures for the credit card system.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 54 FR 28373, July 5, 1989, unless otherwise noted.

1870.000 Scope of part.

This part contains NASA-unique regulations which—

(a) Constitute a system of regulations such that presentation in a unified format is essential;

(b) Relate to numerous FAR subparts;

(c) Have, as a whole, no clearly identifiable FAR counterpart; and

(d) May include non-regulatory material necessary to complete coverage of the instant subject.

Subpart 1870.1—NASA Acquisition of Investigations System

1870.101 Purpose.

Experience has shown that the best space research results when active space research investigators personally participate in the selection of investigations. The investigation acquisition system provides the mechanism for encouraging the participation of investigators and selecting the investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate and distinct from the ordinary acquisition process but requiring the same vigorous management and discipline to assure compliance with statutory requirements and elementary considerations of equitable treatment. "NASA Acquisition of Investigations" is the formal name under which this system is incorporated into the NASA FAR Supplement.

1870.102 System content.

(a) The regulations governing the NASA Acquisition of Investigations system shall set forth the entire system in a single document, covering the interrelated roles individuals with procurement and programmatic responsibilities both within NASA and the private sector. Therefore, the regulation will provide general and specific guidance to all NASA personnel engaged in the solicitation, evaluation and selection of investigations. It will emphasize the responsibilities of line management and, as appropriate, the selected investigators in the acquisition of equipment necessary for the investigation. It will provide for uniform procedures and equitable treatment in the evaluation and selection of investigators and acquisition of investigative equipment consistent with the FAR and NFS.

(b) The system regulation shall contain policy and procedures applicable to the solicitation of investigations with "Announcements of Opportunity," a form of broad agency announcement authorized at FAR 6.102(d)(2)(i).

1870.103 NASA acquisition of investigations.

(a) The NASA Acquisition of Investigations System is prescribed by Appendix I to this section 1870.103.

(b) NASA may reprint this Appendix I as a separate Handbook for sale and/or distribution provided the following two conditions are met:

(1) With the exception of availability and distribution information, any subsequent modification in the text shall be preceded by a change to the NASA FAR Supplement 1870.103.

(2) The following information shall be included as a part of the prefatory material in the NASA Handbook:

IMPORTANT NOTICE

This Handbook is a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.103) section 1870.103, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.103, Appendix I without issuing a new edition of this Handbook. Any such changes will be published in the FEDERAL REGISTER; however, it is anticipated that such changes will be rare, unless mandated by statute or unusual circumstances. In the event of apparent conflict between this Handbook and the NFS, the NFS shall govern.

APPENDIX I TO 1870.103—GUIDELINES FOR ACQUISITION OF INVESTIGATIONS

Preface

From its beginning, NASA has provided opportunities for qualified people in NASA, other Government agencies, colleges and universities, private industry, and foreign countries to participate in developing and carrying out its responsibilities in aeronautical and space activities. NASA has treated itself as a part of the scientific and technical community and has encouraged this community to bring to bear its expertise in developing investigatory objectives, selecting the investigations to carry out, participating in the resulting missions, analyzing the data obtained, and publishing the results.

Success of our program in aeronautics and space, in a large measure, can be attributed to the ability of NASA to harness the ideas, knowledge, and technical abilities of the investigators within and outside of NASA. Success has also been dependent on the effective development of equipment required for investigations. In the area of space applications, program success also depends upon the support of actual and potential users of space related systems, and upon how well NASA understands their operations and programmatic requirements.

The acquisition of investigations process covered by this Handbook allows the continuation of our successful cooperative endeavors with the scientific, technological, and applications user communities in the Space Transportation System, Spacelab, and Space Station era, and, at the same time, provides standards requiring greater attention to the planning and management of investigations. Also, this Handbook emphasizes the responsibilities of line management and, as appropriate, the selected investigators in the acquisition of equipment necessary for the investigation. This Handbook should assure uniform procedures and equitable treatment in the evaluation and selection of investigators and the acquisition of investigative equipment.

This Handbook provides general and specific guidance to all NASA personnel engaged in the solicitation, evaluation, and selection of investigations.

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CHAPTER 1—THE INVESTIGATION ACQUISITION SYSTEM

100 General

Experience has shown that the best space research results when active space research investigators personally participate in the selection of investigations. The investigation acquisition system provides the mechanism for encouraging the participation of investigators and selecting the investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate and distinct from the ordinary acquisition process but requiring the same vigorous management and discipline to assure compliance with statutory requirements and elementary considerations of equitable treatment.

101 Key Features of the System

1. Utilization of the system commences with a Program Associate Administrator's determination that the investigation acquisition process is appropriate and applicable for a program under consideration. There follows a broadly disseminated Announcement of Opportunity (AO) to the interested community. This solicitation does not generally specify the investigations to be proposed but rather solicits investigative ideas which contribute to broad objectives. The proposals received are distinctive and innovative. In order to determine which of the dissimilar proposals should be selected, a formal competitive evaluation process is utilized. The evaluation for merit is normally made by experts in the specific fields represented by the proposals and care taken to avoid conflicts of interest. These peer evaluators may be from NASA, other Government agencies, universities, or the commercial sector. Along with or subsequent to the evaluation for merit, the other factors of the proposals, such as engineering, cost, and integration aspects, are reviewed by specialists in those areas. The evaluation conclusions as well as considerations of budget and other factors are used to formulate a complement of recommended investigations. A steering committee serving as staff to the Program Associate Administrator reviews the proposed payload or program of investigation, the iterative process, and the selection recommendations. The steering committee serves as a forum where different interests, such as flight program, discipline management, and administration, can be weighed and reconciled.

The Program Associate Administrator selects the investigations and the investigators who shall participate in the program. Once selected, an investigator is assigned appropriate key responsibilities relating to the investigation through a contract with the institution. In the case of foreign investigators, these responsibilities will usually be outlined in an agreement between NASA and the sponsoring governmental agency in the investigator's country.

2. The Announcement of Opportunity process provides a disciplined approach to investigation acquisition. The following major steps must be followed in each case where the determination is made to utilize the investigation acquisition system:

a. Announcement of Opportunity shall be signed by the appropriate Program Associate Administrator and shall be widely distributed to the scientific, technological, and applications user communities, as appropriate.

b. An evaluation team shall be formed including recognized peers of the investigators to review the proposals.

c. A project office will be assigned to assess the engineering, cost, integration, and management aspects of the proposals.

d. A program office will be responsible to formulate a complement of investigations consistent with the objectives stated in the Announcement of Opportunity, cost, and schedule constraints.

e. A steering committee appointed by the appropriate Program Associate Administrator shall review the proposed investigations for relevance and merit, will assure compliance with the system as described in this Handbook, and make selection recommendations.

f. Selections shall be made by the appropriate Program Associate Administrator.

3. Payloads will be formulated consisting of investigations selected through the An-

nouncement of Opportunity process and/or other authorized methods.

4. When the need is determined by the Program Associate Administrator, payload specialists will be selected in accordance with NMI 7100.16, "Payload Specialists for NASA-Related Payloads."

102 Management Responsibilities

1. Program Associate Administrators are responsible for overseeing the process and for making key decisions essential to the process including:

a. Determination to use the investigation acquisition system.

b. Appointment of the steering committee members.

c. Designation of a centralized staff to assure uniformity in the issuance of the Announcement of Opportunity and conformity with the required procedures in the evaluation and selection.

d. Reuse, to the maximum extent practicable, of space hardware and support equipment.

e. Determination to use advisory subcommittees, contractor, or full-time Government employees only in the evaluation process.

f. Issuance of the Announcement of Opportunity.

g. Selection of investigations and investigators, determination of need of a definition phase, determination of the role of the investigator with regard to providing essential investigation hardware and services, and determination of the need for payload specialists.

h. Assure due consideration is given to minorities in the establishment of peer groups, distribution of the Announcement of Opportunity, and in the selection of investigations.

i. Provide a timely, flexible framework for cooperative foreign participation in Space Shuttle, Spacelab, and Space Station missions.

2. Exercise of these responsibilities will require the professional assistance of experts in several functional, programmatic, and technical disciplines. The Program Associate Administrator should call upon such experts at appropriate times throughout the process. The remaining chapters of this Handbook will discuss the exercise of the foregoing responsibilities in greater detail.

CHAPTER 2—APPLICABILITY OF THE PROCESS

200 General

The system used for acquisition of investigations is separate and distinct from the agency procedures for procurement of known requirements of hardware and services. A decision to use this special acquisition process will be based on a considered determination, in accordance with the general guidance in this chapter, that it is the most suitable to meet program needs. The decision-making official will consider the criteria for use of the system. The project plan or other program or project documentation should discuss the proposed mode of investigations selection.

201 Criteria for Determining Applicability

1. The decision to utilize the investigations acquisition process as an alternative to the normal planning and acquisition process of the agency can only be made after consideration of the special conditions which are requisite to its use. All of the following conditions should exist before deciding that the system is appropriate and applicable:

a. NASA has a general objective which can be furthered through unique, novel, experimental approaches. To develop such novel approaches, NASA wishes to draw upon the broadest reservoir of ideas that can be made available.

b. Choices must be made among competing dissimilar ideas in expanding knowledge of phenomena in the atmosphere and space.

c. Individual participation of an investigator is essential to exploitation of the opportunity.

2. The investigations acquisition process shall not be used when any of the following characteristics are present:

a. The requiring office can define a requirement sufficiently to allow for normal procurement. This includes requirements that can be stated as design or performance specifications, including requirements for the use of known technology and hardware, and requirements for continuation of existing tasks.

b. The program is extremely complex, requiring specialized integration, coordination, or other special handling, or extending over a lengthy period wherein individual participation is not essential.

c. It is not possible or considered essential to the program to follow the critical steps of the special investigations acquisition process.

202 Programs and Activities Where Use May Be Considered

1. *General.* The investigation acquisition process is most suitable for investigations aimed at exploration requiring several unique sensors or instruments, but it has been used successfully and advantageously in several types of opportunity. Each program is unique and the opportunities for participation in investigative effort will necessarily vary from program to program. Similarly, program implementation plans may provide opportunities for participation but may not meet the conditions necessary for use of the special investigations acquisi-

tion process. In those latter cases, the normal procurement procedures will be followed to meet the program needs. Because of the differences in programs, only general standards can be given to guide the decision of whether or not to use the alternate acquisition process. There follows a discussion of several types of programs, the opportunities they offer, and comment on the suitability of the special process.

2. *Exploration and Space Research Flights*—a. *Examples.* Space Transportation System (STS) flights with attached payloads, generally Spacelab payloads; and free-flying spacecraft, such as Explorers, Pioneers, Space Telescope, Landsats, and Long Duration Exposure Facilities.

b. *Types of Opportunity.* (1) A common and sought after opportunity is to participate as a Principal Investigator responsible for conceiving and conducting a space investigation. This may involve a major piece of instrumentation. In the case of a "facility" or "multiuser" payload, each Principal Investigator's responsibilities would ordinarily involve a relatively minor portion of the total instrument.

(2) There may also be an opportunity to serve on a Principal Investigator's team as a team member or as a Co-Investigator.

(3) A type of opportunity that generally involves the use of data from another investigator's instrument is that of guest investigator or guest observer. Guest investigators usually participate after the primary objectives have been satisfied for the investigations involved.

(4) A team may be formed from selected investigators to assist in defining planned mission objectives and/or to determine, in a general manner, the most meaningful instruments to accomplish the mission objectives.

c. *Selection and Acquisition Procedures.* The investigation acquisition process may be applicable to all of these types of opportunities. The supposition common in these opportunities is that the best ideas and approaches are likely to result from the broadest possible involvement of the scientific, technological or applications user communities. Most free-flying spacecraft represent single flight opportunities in contrast to Spacelab payload acquisition which may have a number of discipline objectives since the flight opportunities are frequent and recurring.

3. *Minor Missions*—a. *Examples.* Research aircraft, sounding rockets, balloons, and minor missions are generally of short duration, small in size, often single purpose, and subject to repetition. Many investigations are follow-on to past-flight investigations.

b. *Types of Opportunity.* (1) Principal Investigators responsible for investigation.

(2) Data use or analysis.

c. *Selection and Acquisition Process.* Opportunities for participation on minor missions are generally suitable for normal procurement procedures. The use of a general announcement announcing the general nature and schedule of flights may be appropriate when considered necessary to broaden participation by requesting investigator-initiated research proposals. Procurement procedures as contained in NASA FAR Supplement shall be used for follow-on repeat flights. Although NASA seeks unique, innovative ideas for these missions, the prospect of reflight and the latitude in determining number and schedule of flights argue against the need for the use of the investigations acquisition process to force dissimilar proposals into an annual or periodic competitive structure. On the other hand, there are some minor missions addressed to specific limited opportunities; for example, a solar eclipse. When such limitations indicate that the special competitive structure is needed, it should be authorized.

4. *Operational and Operational Prototype Spacecraft*—a. *Examples.* GOES, TIROS.

b. *Selection and Acquisition Process.* The user agency can be expected to specify performance parameters. Payload definition will be the responsibility of the user agency and NASA. Specifications sufficient for normal procedures can be produced. Use of data from the mission is the responsibility of the user agency. Thus, the special process is not required.

5. *Reimbursable Missions*—a. *Examples.* INTELSAT, SATCOM, WESTAR, MARISAT.

b. *Selection and Acquisition Process.* Payload determination and delivery are the responsibility of the user organization. NASA's role is essentially to provide launch services. No special process is required.

6. *Supporting Research and Technology (SR&T)*—a. *Examples.* Studies, minor developments, instrument conceptualization, ground-based observations, laboratory and theoretical supporting research, and data reduction and analysis which is unconstrained by a specific opportunity.

b. *Selection and Acquisition Process.* Programs in these areas tend to go forward on a continuing basis, rather than exploiting unique opportunities. Normal procurement procedures should be utilized to satisfy these requirements. A general announcement of area of interest could be made when greater participation is deemed advisable. Proposals can be solicited or unsolicited and can be entertained within the context of the normal procurement procedure.

203 Specific Approval Required

The Program Associate Administrator responsible for the program is also responsible for determining whether or not to use the special investigations acquisition process. Normally on major projects, or when a project plan is required, use of the investigation acquisition system will be justified and recommended in the project planning documentation and will be coordinated with staff offices and discussed in the planning presentation to the Deputy Administrator or designee.

CHAPTER 3—THE ANNOUNCEMENT OF OPPORTUNITY

300 General

The essence of the competitive solicitation is through use of an Announcement of Opportunity. The Announcement is characterized by its generality since NASA has not pre-determined a specific and finite objective but only the general objective of the investigations. Notwithstanding its general nature, it is essential that the Announcement of Opportunity contains sufficient data in order to obtain meaningful proposals. To a considerable extent, the detail and depth of the Announcement will depend on the investigative objective. In all cases, judgment is of paramount importance, since the purpose is to get adequate information to assess the relevance, merit, cost, and management without overburdening the proposer.

301 Need for Preparatory Effort

1. When the use of the Announcement process is contemplated, there is need to consult with appropriate Headquarters offices and the Project Installation responsible for the project prior to release of the Announcement. These consultations will require early involvement of the Project Installation and appropriate Headquarters offices in the investigation acquisition process.

2. In addition, the need to meet legal requirements in the acquisition processes will require early external Program Office involvement to:

a. Synopsize the Announcement in the Commerce Business Daily prior to the time of release.

b. Determine if there is instrumentation or support equipment available which may be appropriate to the Announcement with all necessary background data considered essential for use by a proposer.

c. Determine mailing lists, including the mailing list maintained by the International Affairs Division, Office of External Relations, for broad dissemination of the Announcement to the appropriate recipients.

d. Assure mandatory provisions are contained in the Announcement.

3. Other methods of dissemination of the Announcement may also be used, such as the use of press releases, etc. When possible, the Announcement should be widely publicized through publications of appropriate professional societies; however, NASA policy does not allow payment for the placement of advertisements.

302 Responsibilities

1. The Program Office originator is responsible for the content of the Announcement and that coordination with concerned Headquarters offices and field installations has been accomplished. All personnel involved in the evaluation of investigative proposals are responsible for familiarizing themselves and complying with this Handbook and other applicable regulations. To this end, they are expected to seek the advice and guidance of appropriate Headquarters program and staff offices, and Project Installation management.

2. The Program Office is also responsible for coordinating the Announcement of Opportunity with the International Affairs, Educational Affairs, Management Support Divisions, Office of External Relations, Office of General Counsel, and Office of Procurement prior to issuance. Attention is directed to NMI 1362.1, "Initiation and Development of International Participation and Cooperation in Aeronautical and Space Programs."

3. Concurrence of the Office of Procurement is required before issuance of an Announcement of Opportunity.

303 Proposal Opportunity Period

1. The Announcement of Opportunity is considered the primary method of soliciting investigations. As such, it is necessary that the process accommodate the continuous opportunities afforded by the Shuttle/Spacelab flights. Thus, the following methods may be utilized, individually or in combination, to enable an Announcement and resultant proposals to be open for an extended period of time and/or to cover a series or range of flight possibilities or disciplines:

a. The Announcement may be issued establishing a number of proposal submission dates. Normally, no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposals.

b. The Announcement may be issued establishing a single proposal submission date. However, the Announcement could provide that NASA may amend the Announcement to provide for subsequent dates for submission of proposals, if additional investigations are desired within the Announcement objectives. In this case, the initiative to reopen is a management determination. If sufficient investigations are selected to satisfy the Announcement objectives or the flight possibilities as a result of the first submission, subsequent opportunities for proposal submission by potential investigators would not be available.

c. The Announcement may be issued to provide for an initial submission date with the Announcement to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals, the time remaining prior to the flight opportunity(s) contemplated by the Announcement, and payload funding and availability.

2. Generally, a core or primary payload of investigations would be selected from the initial submission of proposals under the above methods of open-ended Announcements. These selections could be final or tentative recognizing the need for further definition. Proposals received by subsequent submission dates would be considered in the scope of the original Announcement but would be subject to the opportunities and resources remaining available or the progress being made by prior selected investigations.

3. Any investigation proposal, whether received on the initial submission or subsequent submission, requires notification to the investigator and the investigator's institution of the proposal disposition. Some of the proposals will be rejected completely and the investigators immediately notified. The remaining unselected proposals may, if agreeable with the proposers, be held for later consideration and funding and the investigator so notified. However, if an investigator's proposal is considered at a later date by NASA, the investigator must be given an opportunity to validate the proposal with the investigator's institution and for updating the cost and other data contained in the original submission prior to a final selection. In summary, NASA may retain proposals, receiving Category I, II, or III classifications (see paragraph 403), for possible later sponsorship until no longer feasible to consider the proposal. When this final stage is reached, the investigator must be promptly notified.

4. If the intent is to hold proposals for possible later consideration, as discussed in subparagraph 3, the Announcement should specifically indicate this intent and the procedure to be used. Proposing investigators not desiring their proposals be held for later consideration should be given the opportunity to so indicate in their original submissions.

304 Guidelines for Announcement of Opportunity

1. The preparation of the Announcement of Opportunity should be a multifunctional effort. It involves program and project management and usually involves other offices of NASA.

2. The Announcement should be tailored to the particular needs of the contemplated investigations and be complete in itself. Each Announcement will be identified as (Program Office) originated and numbered consecutively each calendar year, e.g. OSSA-1-86, OSSA-2-86; OAST-1-86; OSTDS-1-86; etc. The required format and detailed instructions regarding the contents of the Announcement are contained in Appendix A. They are summarized as follows:

a. *Description of the Opportunity*. The basic purpose or aims of the opportunity.

b. *Announcement Objectives*. A succinct statement of the specific scientific, applications, and/or technological objectives.

c. *Background*. An explanation of the context of the opportunity in relation to broader objectives, other disciplines, and prior studies and investigations.

d. *Proposal Opportunity Period*. The period in which the Announcement opportunity will remain open for receipt of proposals.

e. *Requirements and Constraints*. Technical, programmatic, cost, and schedule requirements or limitations.

f. *Proposal Submission Information*. Information relating to the proposal submission procedure.

g. *Proposal Evaluation, Selection, and Implementation*. The notification to the proposers of the evaluation criteria and the manner of proposal evaluation.

h. *Schedule*. Scheduled dates for activities related in the Announcement.

i. *Appendices*. The General Instructions and Provisions and any other appendices that are pertinent to the Announcement.

3. The General Instructions and Provisions (Appendix B) are necessary to accommodate the unique aspects of the Announcement of Opportunity process. The instructions and provisions inform potential investigators and their institutions of certain prerogatives of the selection official and of procedural requirements dictated by law and regulation. Therefore, they must be appended to each Announcement of Opportunity.

4. At the time of issuance, copies of the Announcement must be furnished to the Office of Procurement and to the Office of General Counsel.

5. Proposers should be informed of significant departures from scheduled dates for activities related in the Announcement.

305 Announcement of Opportunity Soliciting Foreign Participation

Proposals for participation by individuals outside the U.S. should be submitted in the same format (excluding cost plans) as U.S.

proposals; they should be typewritten and be in English; the proposals should be reviewed and endorsed by the appropriate foreign governmental agency. If letters of "Notice of Intent" are required, the Announcement should indicate that they be sent to NASA's International Affairs Division, Office of External Relations. Should a foreign proposal be selected, NASA will arrange with the sponsoring foreign agency for the proposed participation on a no-exchange-of-funds basis, in which NASA and the sponsoring agency will each bear the cost of discharging its respective responsibilities. Note that additional guide-lines applicable to foreign proposers are contained in the Management Plan Section of Appendix C (see section II) and must be included in any Guidelines for Proposal Preparation or otherwise furnished to foreign proposers.

306 Guidelines for Proposal Preparation

While not all of the guidelines outlined in Appendix C will be applicable in response to every Announcement, the investigator should be informed of the relevant information required to allow for an evaluation of the investigator's proposal. The proposal may be submitted on a form to be supplied by the Program Office. However, the proposal should be submitted in at least two sections: (1) Investigation and Technical Section; and (2) Management and Cost Section as described in Appendix C.

CHAPTER 4—EVALUATION OF PROPOSALS

400 General

The evaluation process assures consideration of the several aspects of each proposal and constitutes a series of progressive sorting of the proposals. A review resulting in a categorization is performed by using one of the methods or combination of the methods outlined in paragraph 402. The purpose of this initial review is to determine the scientific and/or technological merit of the proposals in the context of the Announcement objectives.

Those proposals which are considered to have the greatest scientific or technological merit are then reviewed in detail for the engineering, management, and cost aspects, usually by the Project Office at the installation responsible for the project. Final reviews are performed by the Program Office and the Steering Committee and are aimed at developing a group of investigations which represent an integrated payload or a well-balanced program of investigation which has the best possibility for meeting the announced scientific, applications, and/or technological objectives, and within programmatic constraints. The importance of considering the interrelationship of the several aspects of the proposals to be reviewed in the process and the need for carefully planning their treatment should not be overlooked. An evaluation plan has been found helpful to the evaluators, program management officials, and the selection official. The evaluation plan should be developed before issuance of the Announcement of Opportunity. It should cover the recommended staffing for any subcommittee or contractor support, review guidelines as well as the procedural flow and schedule of the evaluation. While not mandatory, such a plan should be considered for each Announcement. A fuller discussion of the evaluation and selection process is included in the following paragraphs.

401 Criteria for Evaluation

1. The fundamental aim of the investigations acquisition process is the acquisition of those unique ideas and capabilities which best fulfill an Announcement's stated scientific, applications, and/or technological objectives. In furtherance of this goal, each Announcement must indicate those criteria which the evaluators will apply when assessing the merit of a proposal. The relative importance of each criterion must also be stated in the Announcement. The provision of this information will allow prospective investigators to make informed judgments in their attempt to formulate proposals that best meet the stated objectives.

2. Following is a list of general evaluation criteria which would be appropriate for inclusion in most Announcements:

a. The scientific, applications, and/or technological merit of the investigation.

b. The relevance of the proposed investigation to the Announcement's stated scientific, applications, and/or technological objectives.

c. The competence and experience of the investigator and any investigative team, as an indication of the investigator's ability to carry the investigation to a successful conclusion.

d. Adequacy of whatever apparatus may be proposed with particular regard to its ability to supply the data needed for the investigation.

e. The reputation and interest of the investigator's institution, as measured by the willingness of the institution to provide the support necessary to ensure that the investigation can be completed satisfactorily.

In addition to or in lieu of the criteria listed herein, additional criteria may be utilized. In all cases, the evaluation criteria must be germane to the accomplishment of the stated objectives.

3. Cost and management aspects will be considered in all selections.

4. Once the evaluation criteria and their relative importance are disseminated through issuance of the Announcement, it is

essential that they be applied in a uniform manner. If it becomes apparent, before the date set for receipt of proposals, that the criteria or their relative importance should be changed, the Announcement will be amended, and all known recipients will be informed of the change and given an adequate opportunity to consider it in submission of their proposals. Evaluation criteria and/or their relative importance will not be changed after the date set for receipt of proposals.

402 Methods of Evaluation

1. Alternative methods are available to initiate the evaluation of proposals received in response to an Announcement of Opportunity. These are referred to hereinafter as the Advisory Subcommittee Evaluation Process, the Contractor Evaluation Process, and the Government Evaluation Process. In all processes, a subcommittee of the appropriate Program Office Steering Committee will be formed for the purpose of categorizing the proposals. The various approaches, described in detail in paragraph 403, are summarized as follows:

a. Advisory Subcommittee Evaluation Process—An advisory subcommittee of the appropriate Program Office Steering Committee may be established to evaluate the scientific, applications, or technological merit of the proposals and to categorize them. This method envisions the use of non-Government peers or a combination of non-Government and Government peers. The impact of using one of the open-ended Announcement methods should be considered in establishing the subcommittee.

b. Contractor Evaluation Process—In some instances, it may be necessary for NASA to utilize a contractor to assist in evaluation of proposals. The contractor would not provide advice or recommendations to the agency nor categorize the proposals but would assist by submitting a summary of each proposal along with a listing of its major strengths and weaknesses to the Program Office. The Program Office, using full-time Government employees appointed as a subcommittee of the Program Office Steering Committee, will, upon consideration of the contractor's report, categorize the proposals. This method may also be used to aid an advisory subcommittee established as indicated in subparagraph a. in which event the categorization function will be performed by the advisory subcommittee.

c. Government Evaluation Process—In certain circumstances, such as those situations where the establishment of an advisory subcommittee is not feasible, it may be appropriate to appoint or assign full-time Government employee(s) as a subcommittee of the Program Office Steering Committee to perform the evaluation and categorization of proposals.

2. Following categorization under one of the methods outlined in subparagraphs a. through c., those proposals still in consideration will be processed to the selection official as prescribed hereafter.

403 Advisory Subcommittee Evaluation Process

1. Evaluation of scientific and/or technological merit of proposed investigations is the responsibility of an advisory subcommittee of the Steering Committee. It is of prime importance that the appointment of members to the subcommittee be weighed carefully as these individuals may exercise significant influence on the selection of investigations and hence achievement of program goals and objectives.

2. The subcommittee constitutes a peer group qualified to judge the scientific and technological aspects of all investigation proposals submitted in a specific program. For a given application of the process, one or more subcommittees may be established depending on the breadth of the technical or scientific disciplines inherent in the Announcement's objectives. Each subcommittee represents a discipline or grouping of closely related disciplines. To maximize the quality of the subcommittee evaluation and categorization, the following conditions of selection and appointment should be considered.

a. The subcommittee normally should be established on an ad hoc basis for the particular objectives referenced in the Announcement.

b. Qualifications and broad acknowledgment of the professional abilities of the subcommittee members are of primary importance. Institutional affiliations, per se, are not sufficient qualifications.

c. The executive secretary of the subcommittee must be a full-time NASA employee.

d. Subcommittee members should normally be appointed as early as possible and prior to receipt of proposals.

e. In selecting members, care must be taken to avoid conflicts of interest. These include financial interests, institutional affiliations, professional biases and associations, as well as familiar relationships. Conflicts could further occur as a result of imbalance between Government and non-Government appointees, a member evaluating a proposal from the person's parent organization, or membership from institutions representing a singular school of thought in discipline areas involving competitive theories in approach to an investigation.

f. The subcommittee should convene as a group in closed sessions for proposal evaluation to protect the proposer's proprietary ideas and to allow frank discussion of the proposer's qualifications and the merit of the proposer's ideas. Lead review responsibility for each proposal may be assigned to members most qualified in the involved discipline. It is important that each proposal be considered by the entire subcommittee. It is only through this action that dissimilar ideas are forced into open competition.

3. It may not be possible to select a subcommittee fully satisfying all of the conditions described in subparagraph 2. For example, the most qualified specialists in a particularly narrow discipline may themselves, or some other part of their parent organization, be submitting proposals. It is not the purpose of these guidelines to establish provisions for making tradeoffs, where necessary, among the above criteria (see subparagraph 2). This is properly the responsibility of the nominating and appointing officials. This latitude permits flexibility in making decisions in accord with circumstances of each application. In so doing, however, it is emphasized that recognized expertise in evaluating dissimilar proposals is essential to the continued workability of the investigation acquisition process.

4. Candidate subcommittee members should be nominated by the office having responsibility for the evaluation. Nominations should be approved in accordance with NMI 1150.2, "Establishment, Operation, and Duration of NASA Advisory Committees." The notification of appointment should specify the duration of assignment on the subcommittee, provisions concerning conflicts of interest, and arrangements regarding honoraria, per diem, and travel when actually employed.

5. It is important that members of the subcommittee be formally instructed as to their responsibilities with respect to the investigation acquisition process, even where several or all of the members have served previously. This briefing of subcommittee members should include:

a. Instruction of subcommittee members on agency policies and procedures pertinent to acquisition of investigations.

b. Review of the program goals, announcement objectives, and evaluation criteria, including relative importance, which provide the basis for evaluation.

c. Instruction on the use of preliminary proposal evaluation data furnished by the Installation Project Office. The subcommittee should examine these data to gain a better understanding of the proposed investigations, any associated problems, and to consider cost in relation to the value of the investigations' objectives.

d. Definition of responsibility of the subcommittee for evaluation and categorization with respect to scientific
and/or technical merit in accordance with the evaluation criteria.

e. Instruction for documentation of deliberations and categorizations of the subcommittee.

f. Inform the chairperson of the subcommittee and all members that they should familiarize themselves with the provisions of the current "Standards of Conduct for NASA Employees", NHB 1900.1, or "Standards of Conduct for NASA Special Government Employees", NHB 1900.2, as appropriate, regarding conflicts of interest. Members should inform the appointing authority if their participation presents a real or apparent conflict of interest situation. In addition, all participants should inform the selection official in the event they are subjected to pressure or improper contacts.

g. Inform members that prior to the selection and announcement of the successful investigators and investigations, subcommittee members and NASA personnel shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. Also, inform members that subsequent to selection of an investigation and announcement of negotiations with the investigator's institution, information concerning the proceedings of the subcommittee and data developed by the subcommittee will be made available to others within NASA only when the requester demonstrates a need to know for a NASA purpose. Such information will be made available to persons outside NASA, including other Government agencies, only when such disclosure is concurred in by the Office of General Counsel. In this connection, reference is made to 18 U.S.C. 1905 which provides criminal sanctions if any officer or employee (including special employees) of the United States discloses or divulges certain kinds of business confidential and trade secret information unless authorized by law.

6. The product of an advisory subcommittee is the classification of proposals into four categories. The categories are:

a. *Category I.* Well conceived and scientifically and technically sound investigations pertinent to the goals of the program and the Announcement's objectives and offered by a competent investigator from an institution capable of supplying the necessary support to ensure that any essential flight hardware or other support can be delivered on time and that data can be properly reduced, analyzed, interpreted, and published in a reasonable time. Investigations in Category I are recommended for acceptance and normally will be displaced only by other Category I investigations.

b. *Category II.* Well conceived and scientifically or technically sound investigations which are recommended for acceptance, but at a lower priority than Category I.

c. *Category III.* Scientifically or technically sound investigations which require further development. Category III investigations may be funded for development and may be reconsidered at a later time for the same or other opportunities.

d. *Category IV.* Proposed investigations which are recommended for rejection for the particular opportunity under consideration, whatever the reason.

7. A record of the deliberations of the subcommittee should be prepared by the assigned executive secretary and should be signed by the Chairperson. The minutes should contain the categorizations with basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

404 Contractor Evaluation Process

1. The use of the contractor method for obtaining support for evaluation purposes of proposals received in response to an Announcement of Opportunity requires the specific approval of the Program Associate Administrator. Prior to the use of this method, discussion should be held with the Office of Procurement.

2. It is NASA policy to avoid situations in the procurement process where, by virtue of the work or services performed for NASA, or as a result of data acquired from NASA or from other entities, a particular company:

a. Is given an unfair competitive advantage over other companies with respect to future NASA business;

b. Is placed in a position to affect Government actions under circumstances in which there is potential that the company's judgment may be biased; or

c. Otherwise finds that a conflict exists between the performance of work or services for the Government in an impartial manner and the company's own self-interest.

3. To reduce the possibility of an organizational conflict of interest problem arising, the following minimum restrictions will apply and be incorporated into the contract:

a. No employee of the contractor will be permitted to propose in response to the Announcement of Opportunity;

b. The "Limitation on Future Contracting" clause contained in NASA FAR Supplement 1852.209-71 and the conditions set forth in NASA FAR Supplement 1815.413-2 Alternate II (c) and (d) will be included in all such contracts; and

c. Unless authorized by the NASA contracting officer, the contractor shall not contact the originator of any proposal concerning its contents.

4. The scope of work for the selected contractor will provide for an identification of strengths and weaknesses and a summary of the proposals. The contractor will not make selections nor recommend investigations.

5. The steps to be taken in establishing evaluation panels and the responsibilities of NASA and the contractor in relation to the panels will be as follows:

a. The contractor will be required to establish and provide support to panels of experts for review of proposals to evaluate their scientific and technical merit;

b. These panels will be composed of scientists and specialists qualified to evaluate the proposals;

c. The agency may provide to the contractor lists of scientist(s) and specialist(s) in the various disciplines it believes are qualified to serve on the panels;

d. The contractor will report each panel's membership to NASA for approval; and

e. The contractor must make all the necessary arrangements with the panel members.

6. The evaluation support by the contractor's panels of experts will be accomplished as follows:

a. The panels will review the scientific and technical merit of the proposals in accordance with the evaluation criteria contained in the Announcement and will record their strengths and weaknesses.

b. The contractor will make records of each panel's deliberations which will form the basis for a report summarizing the results of the evaluations. Upon request, the contractor shall provide all such records to NASA;

c. The chairperson of each panel should certify that the evaluation report correctly represents the findings of the review panel; and

d. A final report will be submitted as provided in the contract.

7. A subcommittee of the Program Office Steering Committee will be established on an ad hoc basis. Utilizing furnished data, the subcommittee will classify the proposals into the four categories enumerated in paragraph 403, "Advisory Subcommittee Evaluation Process." A record of the deliberations of the subcommittee should be prepared by an assigned executive secretary and signed by the chairperson. The minutes should contain the categorizations with the basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

405 Government Evaluation Process

1. The Program Associate Administrator may, in accordance with NMI 1150.2, appoint one or more full-time Government employees as subcommittee members of the Program Office Steering Committee to evaluate and categorize the proposals.

2. Each subcommittee member should be qualified and competent to evaluate the proposals in accordance with the Announcement evaluation criteria. It is important that a subcommittee's evaluation be unin-

fluenced by others either within or outside of NASA.

3. The subcommittee members will not contact the proposers for additional information.

4. The subcommittee members will classify the proposals in accordance with the four categories indicated in paragraph 403. Each categorization will be supported by an appropriate rationale including a narrative of each proposal's strengths and weaknesses.

406 Engineering, Integration, and Management Evaluation

1. The subcommittee responsible for categorization of each proposal in terms of its scientific, applications, or technical merit should receive information on probable cost, technical status, developmental risk, integration and safety problems, and management arrangements in time for their deliberations.

2. This information should be provided, where appropriate, at the discretion of the Headquarters Program Office by the Project Office at the cognizant installation. This information can be in fairly gross, general terms and should reflect what insights the Project Office can provide without requesting additional details from the proposers. This limited Project Office review will not normally give the subcommittees information of significant precision. The purpose is to give the subcommittee sufficient information so it can review the proposals in conjunction with available cost, integration, and management considerations to gain an impression of each investigator's understanding of the problems of the experiment and to permit gross trade-offs of cost versus value of the investigation objective.

3. Following categorization, the Project Office shall evaluate proposals still in contention, in depth, including a thorough review of each proposal's engineering, integration, management, and cost aspects. This review should be accomplished by qualified engineering, cost, and business analysts at the project center. The review must be a regular part of the evaluation and selection process.

4. In assessing proposed costs, the evaluation must consider:

a. The investigation objective.

b. Comparable, similar or related investigations.

c. Whether NASA or the investigator should procure the necessary supporting instrumentation or services and the relative cost of each mode.

d. Total overall or probable costs to the Government including integration and data reduction and analysis. In the case of investigations proposed by Government investigators, this includes all associated direct and indirect cost. With respect to cooperative investigations, integration, and other applicable costs should be considered.

5. The Project Office, as part of the in-depth evaluation of proposals that require instrumentation or support equipment, will survey all potential sources for Government-owned instrumentation or support equipment that may be made available, with or without modifications, to the potential investigator. Such items contributed by foreign cooperating groups which are still available under cooperative project agreements will also be considered for use under the terms and conditions specified in the agreements. As part of the evaluation report to the Program Office, the availability or nonavailability of instrumentation or support equipment will be indicated.

6. Proposals which require instrumentation should be evaluated by project personnel. This evaluation should cover the interfaces and the assessment of development risks. This evaluation should furnish the selection official with sufficient data to contribute to the instrument determinations. Important among these are:

a. Whether the instrument requires further definition;

b. Whether studies and designs are necessary to provide a reasonably accurate appreciation of the cost;

c. Whether the investigation can be carried out without incurring undue cost, schedule, or risk of failure penalties; and

d. Whether integration of the instrument is feasible.

7. In reviewing an investigator's management plan, the Project Office should evaluate the investigator's approach for efficiently managing the work, the recognition of essential management functions, and the effective overall integration of these functions. Evaluation of the proposals under final consideration should include, but not be limited to: workload—present and future related to capacity and capability; past experience; management approach and organization; e.g.:

a. With respect to workload and its relationship to capacity and capability, it is important to ascertain the extent to which the investigator is capable of providing facilities and personnel skills necessary to perform the required effort on a timely basis. This review should reveal the need for additional facilities or people, and provide some indication of the Government support the investigator will require.

b. A review should be made of the investigator, the investigator's institution, and any supporting contractor's performance on prior investigations. This should assist in arriving at an assessment of the investigator and the institution's ability to perform the effort within the proposed cost and time constraints.

c. The proposed investigator's management arrangements should be reviewed, including make or buy choices, support of any co-investigator, and preselected subcontractors or other instrument fabricators to determine whether such arrangements are justified. The review should determine if the proposed management arrangements enhance the investigator's ability to devote more time to the proposed experiment objectives and still effectively employ the technical and administrative support required for a successful investigation. In making these evaluations, the Project Office should draw on the installation's engineering, business, legal, and other staff resources, as necessary, as well as its scientific resources. If further information is needed from the proposers, it should be obtained through the proper contacts.

407 Program Office Evaluation

1. A Program Office responsible for the project or program at Headquarters will receive the evaluation of the several aspects of the proposals, and weigh the evaluative data to determine an optimum payload or program of investigation. This determination will involve recommendations concerning individual investigations; but, more importantly, should result in a payload or program which is judged to optimize total mission return within schedule, engineering, and budgetary constraints. The recommendations so made should facilitate sound selection decisions by the Program Associate Administrator. Three sets of recommendations result from the Program Office evaluation:

a. Optimum payload or program of investigations, or options for alternative payloads or programs.

b. Recommendation for final or tentative selection based on a determination of the degree of uncertainty associated with individual investigations. A tentative selection may be considered step one of a two-step selection technique.

c. Upon consideration of the guidelines contained in paragraph 501-1c, recommending responsibility for instrument development.

2. The cognizant Installation Project Office evaluation is principally concerned with ensuring that the proposed investigation can be managed, developed, integrated, and executed with an appropriate probability of technical success within the estimated probable cost. The Headquarters program Director, drawing upon these inputs, should be mainly concerned with determining a payload or program from the point of view of programmatic goals and budgetary constraints. Discipline and cost trade-offs are considered at this level. The Headquarters Program Office should focus on the potential contribution to program objectives that can be achieved under alternative feasible payload integration options.

3. It may be to NASA's advantage to consider certain investigations for tentative selection pending resolution of uncertainties in their development. Such tentative selections should be reconsidered after a period of time for final selection in a payload or program of investigations. This two-step selection process should be considered when:

a. The potential return from the investigation is sufficient, relative to that of the other investigations under consideration, and that its further development appears to be warranted before final selection.

b. The investigation potential is of such high priority to the program that the investigation should be developed for flight if at all possible.

c. The investigative area is critical to the program and competitive approaches need to be developed further to allow selection of the optimum course.

4. Based on evaluation of the above considerations associated with the investigations requiring further development of hardware, the following information should be provided to the Steering Committee and the Program Associate Administrator responsible for selection:

a. The expected gain in potential return associated with the eventual incorporation of tentatively recommended investigations in the payload(s) or program.

b. The expected costs required to develop instrumentation to the point of "demonstrated capability."

c. The risk involved in terms of added cost, probability of successfully developing the required instrument capability, and the possibility of schedule impact.

d. Identification of opportunities, if any, for inclusion of such investigations in later missions.

5. In those cases where investigations are tentatively selected, an explicit statement should be made of the process to be followed in determining the final payload or program of investigations and the proposers so informed. The two-phase selection approach provides the opportunity for additional assurance of development potential and probable cost prior to a full and final commitment to the investigation.

6. As instruments used in investigations become increasingly complex and costly, the need for greater control of their development by the responsible Headquarters Program Office also grows. Accordingly, as an integral part of the evaluation process, a deliberate decision should be made regarding the role of the Principal Investigator with respect to the provision of the major hardware associated with that person's investigation. The guidelines for the hardware acqui-

sition determination are discussed in paragraph 501-1c.

7. The range of options for responsibility for the instrumentation consists of:

a. Assignment of full responsibility to the Principal Investigator. The responsibility includes all in-house or contracted activity to fabricate, test calibrate and provide the instrumentation for integration.

b. Retention of developmental responsibility by the Government with participation by the Principal Investigator in key events defined for the program. In all cases the right of the Principal Investigator to counsel and recommend is paramount. Such involvement of the Principal Investigator may include:

(1) Provision of instrument specifications.

(2) Approval of instrument specifications.

(3) Independent monitorship of the development and advice to the Government on optimization of the instrumentation for conduct of the investigation.

(4) Participation in design reviews and all other appropriate reviews.

(5) Review and concurrence in changes resulting from design reviews.

(6) Participation in configuration control board actions.

(7) Advice in definition of test program.

(8) Review and approval of test program and changes thereto.

(9) Participation in conduct of the test program.

(10) Participation in calibration of instrument.

(11) Participation in final inspection and acceptance of the instrument.

(12) Participation in subsequent test and evaluation processes incident to integration and flight preparation.

(13) Participation in the development and support of the operations plan.

(14) Analysis and interpretation of data.

8. Normally, the Principal Investigator should as a minimum:

a. Approve the instrument specification.

b. Consult and advise the project manager in development and fabrication.

c. Participate in final calibration of the instrument.

d. Develop and support the operations plan.

e. Analyze and interpret the data.

9. The cognizant Project Installation is responsible for implementing the program or project and should make recommendations concerning the appropriate role for the Principal Investigators. The responsible Program Associate Administrator will determine the role, acting upon the advice of the responsible Headquarters Program Office and the Steering Committee. The Principal Investigator's desires will be respected in the negotiation of the person's role allowing an avenue of appeal to the Program Associate Administrator and, of course, the right to withdraw from participation.

10. The Program Office responsible for the program should make a presentation to the Steering Committee with supporting documentation on the several decisions to be made by the responsible Program Associate Administrator.

408 Steering Committee Review

1. The most important role of the Steering Committee is to provide a substantive review of a potential payload or program of investigations and to recommend a selection to the Program Associate Administrator. The Steering Committee applies the collective experience and insight of representatives from the program and discipline communities and offers a forum for discussing the logic of the selection from those points of view. In addition to this mission-specific evaluation function, the Steering Committee provides central guidance to subcommittee chairpersons and serves as a clearinghouse for problems and complaints regarding the evaluation and selection process. The Steering Committee is responsible for assuring adherence to required procedures. Lastly, it is the forum where discipline objectives are weighed against program objectives and constraints.

2. The Steering Committee represents the means for exercising three responsibilities in the process of selecting investigations to:

a. Review compliance with procedures governing application of the investigation acquisition process.

b. Ensure that adequate and appropriate documentation has been made of the several steps in the evaluation process.

c. Review the results of the evaluation by the subcommittee, Project, and Program Offices and prepare an assessment or endorsement of a recommended payload or program of investigations to the Program Associate Administrator.

3. The purpose in exercising the first of these responsibilities is to ensure equity and consistency in the application of the process. In this sense, the Steering Committee is intended to provide the necessary checks, balances, reviews, and coordination established through procedures and controls inherent in conventional acquisition practices.

4. The second and third responsibilities of the Steering Committee are technical in nature. They require that the Steering Committee review the evaluations by subcommittee, the Project Office, and the Program Office in terms of their completeness and appropriateness for forwarding to the Program Associate Administrator. Most important in this review are:

a. Degree to which results of evaluations and recommendations follow logically from the criteria contained in the Announcement.

b. Consistency with objectives and policies generally beyond the scope of affected Project/Program Offices.

c. Sufficiency of reasons stated for tentative recommendations of those investigations requiring further instrument research and development.

d. Sufficiency of reasons stated for determining responsibilities for instrument development.

e. Sufficiency of consideration of reusable space flight hardware and support equipment for the recommended investigations.

f. Sufficiency of reasons given for classifying proposed investigations in their respective categories.

g. Fair treatment of all proposals.

5. The Steering Committee makes recommendations to the selection official on the payload or program of investigations and notes caveats or provisions important for consideration of the selection official.

409 Principles to Apply

1. Paragraph 408 contains a description of the evaluation function appropriate for a major payload or very significant program of investigation. The levels of review, evaluation, and refinement described should be applied in those selections where warranted but could be varied for less significant selection situations. It is essential to consider the principles of the several evaluative steps, but it may not be essential to maintain strict adherence to the sequence and structure of the evaluation system described. The selection official is responsible for determining the evaluation process most appropriate for the selection situation using this chapter as a guide.

2. Significant deviations from the provisions of this Handbook must be fully documented and be approved by the Program Associate Administrator after concurrence by the Office of General Counsel and Office of Procurement.

CHAPTER 5—THE SELECTION PROCESS

500 General

The Program Associate Administrator is responsible for the final decision on those investigations to be selected for contract negotiation. This decision culminates the several types of evaluations and processes that can be summarized as follows:

Evaluation stage	Principal emphasis	Results
Contractor (when authorized)	Summary evaluation (strengths and weaknesses).	Report to Subcommittee.
Subcommittee	Science and technological relevance, value, and feasibility.	Categorization of individual proposals.
Project Office	Engineering/cost/integration/ management assessment.	Reports to Subcommittee and Program Office.
Program Office	Consistency with Announcement and program Objectives, and cost and schedule constraints.	Recommendations to Steering Committee of payload or program of investigations.
Steering Committee	Logic of proposed selections compliance with proper procedures.	Recommendations to Program Associate and Administrator.

501 Decisions To Be Made

1. The selection decisions by the Program Associate Administrator constitute management judgments balancing individual and aggregate scientific or technological merit, the contribution of the recommended investigations to the Announcement's objectives, and their consonance with budget constraints. In so doing, the selection official may develop such additional data to make the following decisions:

a. Determination of the adequacy of scientific/technical analysis supporting the recommended selections. This supporting rationale should involve considerations including:

(1) Assurance that the expected return contributes substantially to program objectives and is likely to be realized.

(2) Assurance that the evaluation criteria were applied consistently to all proposed investigations, thus ensuring that selection and rejection decisions are proper and fair.

(3) Assurance that the set of recommended investigations constitutes the optimum program or payload considering potential value and constraints.

(4) Assurance that only one investigator is assigned as the Principal Investigator to each investigation and that the Principal Investigator will assume the associated responsibilities and be the single point of contact and leader of any other investigators selected for the same investigation.

b. Determination as to whether available returned space hardware or support equipment, with or without modification, would be adequate to meet or support investigation objectives.

c. Determination as to whether the proposed instrument fabricator qualifies and should be accepted as a sole source or whether the requirement should be subjected to competitive solicitation. The following guidelines apply:

(1) The hardware requirement should be subjected to competitive solicitation in those instances where it is clear that the capability is not sufficiently unique to justify sole source procurement.

(2) The hardware requirement should be purchased from the fabricator proposed by the investigator, which may be the investigator's own institution, (a) when the fabricator's proposal contains technical data that are not available from another source, and it is not feasible or practicable to define the fabrication requirement in such a way as to avoid the necessity of using the technical data contained in the proposal; (b) when the fabricator offers unique capabilities that are not available from another source; (c) when the selection official determines as part of the selection that the hardware of the particular fabricator contributes so significantly to the value of the investigator's proposal as to be an integral part of it.

(3) If a producer other than the one proposed by the investigator offers unique capabilities to produce the hardware requirement, NASA may buy the hardware from the qualified fabricator.

(4) If a NASA employee submits a proposal as a principal investigator, any concomitant requirement for hardware necessary to perform the investigation must, in accordance with CICA, either be completed by the installation procurement office or, should it be determined that the hardware is so unique as to constitute a sole source, a justification must be written, synopsized, and approved in accordance with the requirements of FAR and the NFS.

d. Determination of the desirability for tentative selection of investigations. This determination involves considerations including:

(1) Assessment of the state of development of the investigative hardware, the cost and schedule for development in relation to the gain in potential benefits at the time of final selection.

(2) Assurance that there is adequate definition of investigation hardware to allow parallel design of other project hardware.

(3) Assurance that appropriate management procedures are contained in the project plan for reevaluation and final selection (or rejection) on an appropriate time scale.

e. Determination of the acceptability of the proposer's management plan, including the proposed hardware development plan, and the necessity, if any, of negotiating modifications to that plan.

2. In the process of making the above determinations described in subparagraph 1, the Program Associate Administrator may request additional information or evaluations. In most instances, this information can be provided by the Program Office responsible for the mission, project, or program. However, where it is determined appropriate, the Program Associate Administrator may reconvene the subcommittee or poll the members individually or provide for additional analysis or require additional data from evaluators or proposers as considered necessary to facilitate the Program Associate Administrator's decision.

502 The Selection Statement

Upon completion of deliberations, the responsible Program Associate Administrator shall issue a selection statement. Ordinarily this statement will, upon request, be releasable to the public. As a minimum, the selection statement should include:

1. The general and specific evaluation criteria and relative importance used for the selection.

2. The categorizations provided by the subcommittee and the basic rationale for accepting or not accepting each Category I proposal and a succinct statement concerning the nonacceptance of all other proposals.

3. A concise description of each investigation accepted including an indication as to whether the selection is a partial acceptance of a proposal and/or a joinder with other investigators.

4. The role of the Principal Investigator with regard to hardware essential to the investigation and whether the Principal Investigator will be responsible for hardware acquisition and the basis therefor.

5. An indication of the plan and acquisition using the regular procurement processes, if the Principal Investigator is not to acquire the hardware.

6. A statement indicating whether the selection is final or tentative, recognizing the need for better definition of the investigation and its cost.

7. A statement indicating any use of Government-owned available space flight hardware and/or support equipment.

503 Notification of Proposers

1. It is essential that investigators whose proposals are determined to have no reasonable chance for selection be apprised of that fact as soon as practicable. To this end, the responsible Program Office will, upon such determination, promptly notify investigators of that fact together with an exposition of the major reason(s) why the proposals were so considered. The notification letter should also inform such investigators that they may obtain a detailed oral debriefing provided they request it in writing. The letter should point out that such a debriefing would be available only after completion

of the selection process and would otherwise be conducted in accordance with NASA regulations (NASA FAR Supplement). (See paragraph 504.)

2. As a result of the selection decisions made by the Program Associate Administrator, letters of notification will be sent to those Principal Investigators selected to participate. This notification letter should not commit the agency to more than negotiations for the selected investigation leading to a contract, but it should clearly indicate the decision made and contain:

a. A concise description of the Principal Investigator's investigation as selected, specifically noting substantive changes, if any, from the investigation originally proposed by the Principal Investigator.

b. The nature of the selection, i.e., whether it should be considered final or tentative requiring additional hardware or cost definition.

c. A description of the anticipated role of the Principal Investigator including the responsibility for the provision of instruments for flight experiments.

d. Identification of the principal technical and management points to be treated in subsequent negotiations.

e. Any rights to be granted on use of data, publishing of data, and duration of use of the data.

f. Where applicable, indication that a foreign selectee's participation in the program will be arranged between the International Affairs Division, Office of External Relations, and the foreign government agency which endorsed the proposal.

3. In conjunction with the notification of successful foreign proposers, the Program Office shall forward a letter to the responsible International Affairs Division, Office of External Relations, addressing the following:

a. The overall scientific technological objective of the planned effort.

b. The period of time during which the effort is planned.

c. The respective responsibilities of NASA and of the sponsoring (endorsing) governmental agency; these may include:

(1) Provision and subsequent disposition of hardware and software.

(2) Responsibilities for reporting, reduction and dissemination of data.

(3) Responsibilities for transportation of hardware.

d. Any additional information pertinent to the successful conduct of the experiment.

4. Using the information provided in paragraph 3, the International Affairs Division, Office of External Relations will prepare and negotiate an agreement with the sponsoring foreign agency.

5. Notices shall also be sent to those proposers not previously notified pursuant to the preceding paragraphs, and, as applicable, a copy to the sponsoring foreign government agency. It is important that these remaining proposers be informed at the same time as those selected. Other agency notifications and press release procedures will apply, as appropriate.

504 Debriefing

It is the policy of the National Aeronautics and Space Administration to debrief, if requested, unsuccessful proposers of investigations in accordance with NFS 1815.1003. The following considerations are offered in arranging and conducting debriefings:

1. Debriefing should be carried out by an official designated by the responsible Program Associate Administrator. Any other personnel receiving requests for information concerning the rejection of a proposal should refer to the designated official.

2. Debriefing of unsuccessful offerors should be made at the earliest possible time; debriefing will generally be scheduled subsequent to selection but prior to award of contracts to the successful proposers.

3. Material discussed in debriefing should be factual and wholly consonant with the documented findings of several stages of the evaluation process and the selection statement.

4. The debriefing official should advise of weak or deficient areas in the proposal, indicate whether those weaknesses were factors in the selection, and advise of the major considerations in selecting the competing successful proposer where appropriate.

5. The debriefing official should not discuss other unsuccessful proposals, ranking, votes of members, or attempt to make a point-by-point comparison with successful proposals.

6. A memorandum of record of the debriefing should be provided the Chairperson of the Steering Committee.

CHAPTER 6—PAYLOAD FORMULATION

600 Payload Formulation

1. Payload elements for Space Transportation System (STS) missions can come from many sources. These include those selected through Announcements of Opportunity, those generated by in-house research and funded through the Research and Technology Operations and Plans (RTOP) procedures, unsolicited (domestic and foreign) proposals and those derived from agreements between NASA and external entities. Missions may have payload elements originating from any or all of these sources. However, it is anticipated that the primary source of NASA payload elements will be the Announcement process. Generally, proposals for payload elements submitted outside the Announcement process will not be

selected if they would have been responsive to a stated Announcement objective.

2. Payload elements for STS flights fall into two major categories. "NASA or NASA-related" payload elements are those which are developed by a NASA Program Office or by another party with which NASA has a shared interest. "Non-NASA" payload elements are those which require only STS operation services from NASA and hence interface with NASA through the Office of Space Flight.

3. In general, a Program Office will be designated to be responsible for formulating the "NASA or NASA-related" portion of an STS payload. The Office of Space Flight will be responsible for formulating the "non-NASA" portion of an STS payload. Flights may, of course, consist wholly of payload elements of either type defined in paragraphs 1 and 2. Resource allocation for mixed missions will be determined jointly by the designated Program Office and the Office of Space Flight.

CHAPTER 7—PROCUREMENT AND OTHER CONSIDERATIONS

700 Early Involvement Essential

1. The distinctive feature of the Announcement of Opportunity process is that it is both a program planning system and a procurement system in one single procedure. The choice of what aeronautical and space phenomena to investigate is program planning. Procurement is involved with the purchase of property and services to carry out the selected investigations.

2. Because of both the programmatic and multi-functional aspects of the Announcement of Opportunity process, early involvement of external program office elements is essential. Success of the process requires that it proceed in a manner that meets program goals and is clearly in line with statutory requirements and sound procurement policy.

3. The planning preparation and selection schedule for the investigation should commence early enough to meet the present statutory and regulatory requirements. Chief of these are the requirements for soliciting maximum feasible competition and for conducting discussions with offerors within the competitive range by the Project Office and/or any other evaluation group or office authorized by the selection official.

701 Negotiation, Discussions, and Contract Award

Indicated below are some of the major procurement procedures that need to be accomplished or performed to assure uniformity and sufficiency in the acquisition of investigations. These areas are not exclusive and not intended to substitute for adequate coordination and good judgment before issuance of the Announcement, during evaluation of proposals, and prior to contract award.

1. As negotiated procurements must be made by soliciting proposals from the maximum number of qualified sources consistent with the requirement, the Announcement of Opportunity must also be synopsized in the Commerce Business Daily. Responses to the synopsis must be added to the Announcement mailing list. Every effort should be made to publish opportunities far enough in advance to encourage a broad response. (In no case less than 45 days before the date set for receipt of proposals).

2. Significant items for consideration after receipt of proposals:

a. *Late Proposals.* The NASA policy on late proposals contained in the NASA FAR Supplement (NFS 1815.412) is applicable to proposals received in response to an Announcement of Opportunity. Potential investigators should be informed of this policy. In the Announcement of Opportunity context, the selection official or designee will determine whether a late proposal will be considered.

b. *Competitive Considerations.* (1) The acquisition of investigations involves the solicitation of unique, novel, and unspecified ideas to meet NASA's aeronautical and space responsibilities. The proposals submitted in response to these solicitations are not necessarily fully comparable. Rather these are discrete, novel scientific and technical investigative ideas associated with a limited opportunity. Although not necessarily fully comparable, all proposals within the scope of a specified opportunity must nevertheless be evaluated in accordance with the criteria stated in the Announcement.

(2) Cost must be considered in the evaluation if costs are involved in the investigation. Accordingly, general cost information should be given to the subcommittee by the Installation Project Office for use in determining the categories into which the subcommittee places proposals.

(3) Further information should be obtained, as necessary, by the Installation Project Office and/or any other evaluation group or office authorized by the selection official and from the investigators whose proposals are still being considered. This would be similar to the regular procurement procedure for conducting written and oral discussions. A major consideration during discussions is to avoid unfairness and unequal treatment. Obviously, good judgment is required by all concerned in the extent and content of the discussions. There should be no reluctance in obtaining the advice and guidance of management and staff offices during the discussion phase. A summary should be prepared of the primary points covered in the written and oral dis-

cussions and show the effect of the discussions on the evaluation of proposals. This summary should also contain general information about the questions submitted to the investigators, the amount of time spent in oral discussion, and revisions in proposals, if any, resulting from the discussions.

(4) During the conduct of discussions, all proposers still being considered shall be offered an equitable opportunity to submit such cost, technical, or other revisions in their proposals as may result from the discussions. All proposers shall be informed that any revisions to their proposals must be submitted by a common cut-off date in order to be considered. The record should take note of compliance of the investigators with that cut-off date.

3. Significant items for consideration before award:

a. Issuance of a Request for Proposal (RFP)—A formal RFP should not be issued to obtain additional information on proposals accepted under the Announcement of Opportunity process. Additional technical, cost, or other data received should be considered as a supplement to the original proposal.

b. Selection of Investigator/Contractor—The selection decision of the Program Associate Administrator approves the selected investigators and their institutions as the only satisfactory sources for the investigations. The selection of the investigator does not constitute the selection of that person's proposed supporting hardware fabricator unless the selection official specifically incorporates the fabricator in the selection decision.

702 Application of the Federal Acquisition Regulation (FAR) and theNASA FAR Supplement (NFS)

The Announcement of Opportunity process supplants normal procurement procedures only to the extent necessary to meet the distinctive features of the process that it is both a program planning system and a procurement system in a single procedure. This process is not intended to conflict with any established statutory requirements. The FAR, the NFS, and related procurement directives should be referred to for guidance and clarification in those instances where specific instructions are not contained in this Handbook.

703 Other Administrative and Functional Requirements

After selection, all other applicable administrative and functional requirements will be complied with or incorporated in any resultant contract. These may include requirements contained in such publications as NHB 5300.4(1B), "Quality Program Provisions for Aeronautical and Space System Contractors," and NHB 9501.2, "Procedures for Contractor Reporting of Correlated Cost and Performance Data."

APPENDIX A TO APPENDIX I OF 1870.103—FORMAT OF ANNOUNCEMENT OF OPPORTUNITY (AO)

OMB Approval Number 2700-0042

National Aeronautics and Space
Administration, Washington, DC 20546

Announcement of Opportunity

AO No. — ______________________

(Issuance Date)

(DESCRIPTIVE HEADING)

I. Description of the Opportunity

This section should set forth the basic purpose of the Announcement and describe the opportunity in terms of NASA's desire to obtain proposals which will meet the stated scientific, applications and/or technological objectives. These objectives may be directed to the generation of proposals for investigations and/or they may pertain to the acquisition of dissimilar ideas leading to selection of investigators, guest observers, guest investigators, or theorists; and/or any other approved area as identified in NHB 8030.6. In those instances wherein proposals for investigations are sought, this section should describe the requirement, if any, for selected investigators to serve on advisory or working groups. In those instances where the project or program has not yet been approved, an appropriate qualifying statement should be included to clearly indicate that this Announcement of Opportunity does not constitute an obligation on the part of the Government to carry the proposed effort to completion.

II. Announcement Objectives

This section will give a succinct statement of the specific scientific, applications, and/or technological objective(s) for the opportunity(s) for which proposals are sought.

III. Background

This section should provide an explanation of the context of the opportunity, i.e., information which will help the reader to understand the relevance of the opportunity in relation to broader objectives. For example, if the opportunity is related to a specific mission, this section should so indicate and provide information regarding the mission objectives. If, on the other hand, the opportunity is not related to a specific mission (for example, where the opportunity is discipline-oriented), this section should reflect that fact and provide information which will give the reader insight into the circumstances which have given rise to the opportunity and its relevance to the general scheme of things. Information on prior studies and their availability should, if relevant to an understanding of the opportunity, be disclosed here.

IV. Proposal Opportunity Period

This section should inform the reader of the proposal opportunity period(s). The following methods may be utilized individually or in conjunction for establishing the proposal opportunity period(s):

1. The Announcement may be issued establishing a single date by which proposals may be received. However, the Announcement could provide that the agency may amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired. In this case, the initiative to reopen is an agency management determination and if sufficient investigations were selected for the Announcement objectives or flight possibilities, subsequent opportunities for proposal submission by potential investigators would not be available.

2. The Announcement may be issued to provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals and the time remaining prior to the flight opportunities contemplated by the Announcement.

3. The Announcement may be issued establishing a number of dates by which proposals may be received. Normally no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposal. If desired, this section should further inform the reader that if a proposal receives a Category I, II, or III rating but is not selected for immediate support, the proposal may, if desired by the proposer, be held by NASA for later consideration within the ground rules set forth in paragraphs 1 and 2. The section should inform the reader that if the person wishes the proposal to be so treated, it should be indicated in the proposal. This section should further indicate that offerors whose proposals are to be considered at a later time will be given the opportunity to revalidate their proposals with their institution and update cost data.

V. Requirements and Constraints

1. This section will include technical, programmatic, cost, and schedule requirements or constraints, as applicable, and will specify performance limits such as lifetime, flight environment, safety, reliability, and quality assurance provisions for flight-worthiness. It will specify the requirements and constraints related to the flight crew and the ground support. It will also include requirements for data analysis, estimated schedule of data shipment to user or observer, need for preliminary or raw data analysis and interim reports. It will specify planned period (time) for data analysis to be used for budgeting. It will provide any additional information necessary for a meaningful proposal.

2. When NASA determines that instrumentation, ground support equipment, or NASA supporting effort will be required or may be expected to be required by the contemplated investigations, the Announcement should indicate to the potential investigators that they must submit specific information regarding this requirement to allow an in-depth evaluation of the technical aspects, cost, management, and other factors by the Installation Project Office.

VI. Proposal Submission Information

1. Preproposal Activities—In this section, the Announcement will indicate requirements and activities such as the following:

a. Submittal of "Notice of Intent" to propose (if desired), date for submission, and any additional required data to be submitted. Indicate whether there are information packages which will only be sent to those who submit "Notice of Intent."

b. Attendance at the preproposal conference (if held). Information should be provided as to time, place, whether attendance will be restricted in number from each institution, and whether prior notice of intention to attend is required. If desired, a request may be included that questions be submitted in writing several days before the conference in order to prepare replies.

c. The name and address of the scientific or technical contact for questions or inquiries.

d. Any other preproposal data considered necessary.

2. Format of Proposals—This section should provide the investigator with the information necessary to enable an effective evaluation of the proposal. The information is as follows:

a. Proposal—The Announcement should indicate how the proposal should be submitted to facilitate evaluation. The proposal should be submitted in at least two sections: (1) Investigation and Technical Section; and (2) Management and Cost Section.

b. Certification—The proposal must be signed by an institutional official authorized to certify institutional support, sponsorship of the investigation, management, and financial aspects of the proposal.

c. Quantity—The number of copies of the proposal should be specified. One copy should be clear black and white, and on white paper of quality suitable for reproduction.

d. Submittal Address—proposals from domestic sources should be mailed to arrive not later than the time indicated for receipt of proposals to:

National Aeronautics and Space Administration Office of (Program), Code ______ AO No. ______, Washington, DC 20546.

e. Format—To aid in proposal evaluation, and to facilitate comparative analysis, a uniform proposal format will be required for each Announcement. The number of pages, page size, and restriction on photo reduction, etc., may be included therein. The format contained in Appendix C can be used as a guide. Proposers may be requested to respond to all of the items contained therein or the Announcement may indicate that only selected items need be addressed. Using the Appendix format as a guide, specific guidelines may be prepared for the Announcement or an appropriate form developed. The major consideration is that all proposals be received in a similar format.

3. Additional Information—This section may be used to request or furnish data considered necessary to obtain clear and concise proposals that should not require further discussions with the proposer by the evaluators. Any other pertinent data could also be included in this section, such as significant milestones.

4. Foreign Proposals—The detailed procedures for submission of proposals from outside the U.S. are contained in Appendix B, "General Instructions and Provisions." This section will describe any additional requirements, for example, if information copies of proposals are required to be furnished by the proposer to other organizations, such as European Space Agency (ESA), at the same time the proposal is sent to NASA, this should be indicated here.

5. Cost Proposals (U.S. Investigators Only)—This section defines any special requirements regarding cost proposals of domestic investigators. Reference then should be made to the cost proposal certifications indicated in Appendix B, "General Instructions and Provisions."

VII. Proposal Evaluation, Selection, and Implementation

1. *Evaluation and Selection Procedure.* a. This section should notify the proposers of the evaluation process, i.e., advisory subcommittee, government evaluation and/or contractor assistance.

b. For example, a statement similar to the following should be included: "Proposals received in response to this Announcement of Opportunity will be reviewed by a subcommittee appointed by the (appropriate Program Associate Administrator). The purpose of the review is to determine the scientific/technical merit of the proposals in the context of this Announcement of Opportunity and so categorize the proposals. Those proposals which are considered to have the greatest scientific/technical merit are further reviewed for engineering, integration, management, and cost aspects by the Project Office at the installation responsible for the project. On the basis of these reviews, and the reviews of the responsible Program Office and the Steering Committee, the (appropriate Program Associate Administrator) will appoint/select the investigators/investigations."

2. *Evaluation Criteria.* a. This section should indicate that the selection of proposals which best meet the specific scientific, applications, and/or technological objectives, as stated in the Announcement, is the fundamental aim of the solicitation. This section should then list the criteria to be used in the evaluation of proposals and indicate their relative importance. See paragraph 401, NHB 8030.6, for a listing of criteria generally appropriate.

b. Following a listing of the criteria and an indication of their relative importance, this section will also inform the proposers that cost and management factors, e.g., proposed small business participation in instrumentation fabrication or investigation support, will be separately considered.

VIII. Schedule

This section should include the following, as applicable:

1. Preproposal conference date.
2. Notice of Intent submittal date.
3. Proposal submittal date(s).
4. Target date for announcement of selections.

IX. Appendices

1. General Instructions and Provisions (must be attached to each Announcement).
2. Other Pertinent Data, e.g., Spacelab Accommodations Data.

/s/ Associate Administrator for (Program)

APPENDIX B TO APPENDIX I OF 1870.103—GENERAL INSTRUCTIONS AND PROVISIONS

I. Instrumentation and/or Ground Equipment

By submitting a proposal, the investigator and institution agree that NASA has the option to accept all or part of the offeror's plan to provide the instrumentation or ground support equipment required for the investigation or NASA may furnish or obtain such instrumentation or equipment from any other source as determined by the selecting official. In addition, NASA reserves the right to require use, by the selected investigator, of Government instrumentation or property that subsequently becomes available, with or without modification, that will meet the investigative objectives.

II. Tentative Selections, Phased Development, Partial Selections, and Participation with Others

By submitting a proposal, the investigator and the organization agree that NASA has the option to make a tentative selection pending a successful feasibility or definition effort. NASA has the option to contract in phases for a proposed experiment, and to discontinue the investigative effort at the completion of any phase. The investigator should also understand that NASA may desire to select only a portion of the proposed investigation and/or that NASA may desire the individual's participation with other investigators in a joint investigation, in which case the investigator will be given the opportunity to accept or decline such partial acceptance or participation with other investigators prior to a NASA selection. Where participation with other investigators as a team is agreed to, one of the team members will normally be designated as its team leader or contact point.

III. Selection Without Discussion

The Government reserves the right to reject any or all proposals received in response to this Announcement when such action shall be considered in the best interest of the Government. Notice is also given of the possibility that any selection may be made without discussion (other than discussions conducted for the purpose of minor clarification). It is therefore emphasized that all proposals should be submitted initially on the most favorable terms that the offeror can submit.

IV. Foreign Proposals

See Appendix C, section II, paragraph 3.

V. Treatment of Proposal Data

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal and Quotation Information (Data)

The information (data) contained in [insert page numbers or other identification] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; provided, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

VI. Status of Cost Proposals (U.S. Proposals Only)

The investigator's institution agrees that the cost proposal submitted in response to the Announcement is for proposal evaluation and selection purposes, and that following selection and during negotiations leading to a definitive contract, the institution will be required to resubmit or execute a Standard Form (SF) Form 1411 "Contract Pricing Proposal Cover Sheet" and all certifications and representations required by law and regulation.

VII. Late Proposals

The Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, should such action be in the interest of the Government.

VIII. Source of Space Transportation System Investigations

Investigators are advised that candidate investigations for Space Transportation System (STS) missions can come from many sources. These sources include those selected through the Announcement of Opportunity, those generated by NASA in-house research and development, and those derived from contracts and other agreements between NASA and external entities.

IX. Disclosure of Proposals Outside Government

NASA may find it necessary to obtain proposal evaluation assistance outside the Government. Where NASA determines it is necessary to disclose a proposal outside the Government for evaluation purposes, arrangements will be made with the evaluator for appropriate handling of the proposal information. Therefore, by submitting a proposal the investigator and institution agree that NASA may have the proposal evaluated outside the Government. If the investigator or institution desire to preclude NASA from using an outside evaluation, the investigator or institution should so indicate on the cover. However, notice is given that if NASA is precluded from using outside evaluation, it may be unable to consider the proposal.

X. Equal Opportunity (U.S. Proposals Only)

By submitting a proposal, the investigator and institution agree to accept the following clause in any resulting contract:

Equal Opportunity

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

2. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (a) employment, (b) upgrading, (c) demotion, (d) transfer, (e) recruitment or recruitment advertising, (f) layoff or termination, (g) rates of pay or other forms of compensation, and (h) selection for training, including apprenticeship.

3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

4. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

5. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

6. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

7. The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

8. The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

9. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

10. The Contractor shall include the terms and conditions of subparagraph 1 through 9 of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

11. The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as means of enforcing these terms and conditions, including sanctions for non-compliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

XI. Patent Rights

1. For any contract resulting from this solicitation awarded to other than a small business firm or nonprofit organization, the clause at NFS 1852.227-70, "New Technology," shall apply. Such contractors may, in advance of contract, request waiver of rights as set forth in the provision at NFS

1852.227-71, "Requests for Waiver of Rights to Inventions."

2. For any contract resulting from this solicitation awarded to a small business firm or nonprofit organization, the clause at FAR 52.227-11, "Patent Rights—Retention by the Contractor (Short Form)" (as modified by NFS 1852.227-11), and the clause at NFS 1852.227-73, "Patent Rights Clause for Subcontracts," shall apply.

APPENDIX C TO APPENDIX I OF 1870.103—GUIDELINES FOR PROPOSAL PREPARATION

The following guidelines apply to the preparation of proposals by potential investigators in response to an Announcement of Opportunity. The material presented is merely a guide for the prospective proposer and not intended to be all encompassing or directly applicable to the various types of proposals which can be submitted. The proposer should, however, provide information relative to those items applicable or as otherwise required by the Announcement of Opportunity.

I. Cover Letter

A letter or cover page should be forwarded with the proposal. It should be signed by the investigator and an official by title of the investigator's organization who is authorized to commit the organization that is responsible for the proposal and its contents.

II. Table of Contents

The proposal should contain a table of contents.

III. Identifying Information

The proposal should contain a short descriptive title for the investigation, the names of all investigators, the name of the organization or institution and the full name, address, and telephone number of the Principal Investigator.

Section I—Investigation and Technical Plan

1. *Investigation and Technical Plan.* The investigation and technical plan generally will contain the following:

a. *Summary.* A simple, concise statement about the investigation, its conduct, and the anticipated results.

b. *Objective and Significant Aspects.* A brief definition of the objectives, their value, and their relationships to past, current, and future effort. The history and basis for the proposal and a demonstration of the need for such an investigation. A statement of present development in the discipline field.

c. *Investigation Approach.* (1) Fully describe the concept of the investigation.

(2) Detail the method and procedures for carrying out the investigation.

2. *Instrumentation.* This section should describe all information necessary to plan for experiment development, integration, ground operations, and flight operations. This section must be complete in itself without need to request additional data. Failure to furnish complete data may preclude evaluation of the proposal.

a. *Instrument Description.* This section should fully describe the instrumentation and indicate items which are proposed to be developed as well as any existing instrumentation. Performance characteristics should be related to the experiment objectives as stated in the proposal.

b. *Instrument Integration.* This section should describe all parameters of the instrument pertinent to the accommodation of the instrument in the spacecraft, Spacelab, Shuttle Orbiter, Space Station, etc. These include, but are not limited to volumetric envelope; weight; power requirements; thermal requirements; telemetry requirement; sensitivity to or generation of contamination (e.g., EMI gaseous effluents); data processing requirements.

c. *Ground Operations.* This section should identify requirements for pre-launch or post-launch ground operations support.

d. *Flight Operations.* This section should identify any requirements for flight operations support including mission planning. Operational constraints, viewing requirements, and pointing requirements should also be identified. Details of communications needs, tracking needs, and special techniques, such as extravehicular activity or restrictions in the use of control thrusters at stated times should be delineated. Special communications facilities that are needed must be described. Any special orbital requirements, such as time of month, of day, phase of moon, and lighting conditions are to be given in detail. Describe real-time ground support requirements and indicate any special equipment or skills required of ground personnel.

3. *Data reduction and analysis.* A discussion of the data reduction and analysis plan including the method and format. A section of the plan should include a schedule for the submission of reduced data to the receiving point. In the case of Space Science programs, the National Space Science Data Center, Greenbelt, MD, will be the repository for such data and the Department of Interior, Sioux Falls, SD, for earth observations data.

4. *Orbiter crew and/or payload specialist training requirement.* A description of the tasks required of each crew member (Commander, Pilot, Mission Specialist) or payload specialist should be provided, including the task duration and equipment involved. Indicate special training necessary to provide the crew members or payload

specialist(s) with the capability for performing the aforementioned tasks.

Section II—Management Plan and Cost Plan

A. *Management plan.* The management plan should summarize the management approach and the facilities and equipment required. Additional guidelines applicable to non-U.S. proposers are contained herein:

1. *Management.* a. The management plan sets forth the investigator's approach for managing the work, the recognition of essential management functions, and the overall integration of these functions.

b. The management plan gives insight into the organization proposed for the work, including the internal operations and lines of authority with delegations, together with internal interfaces and relationships with the NASA major subcontractors and associated investigators. Likewise, the management plan usually reflects various schedules necessary for the logical and timely pursuit of the work accompanied by a description of the investigator's work plan and the responsibilities of the co-investigators.

c. The plan should describe the proposed method of instrument acquisition. Specifically, it should include the following, as applicable.

(1) Rationale for the investigator to obtain the instrument through or by the investigator's institution.

(2) Method and basis for the selection of the proposed instrument fabricator.

(3) Unique or proprietary capabilities of the instrument fabricator that are not available from any other source.

(4) Contributions or characteristics of the proposed fabricator's instrument that make it an inseparable part of the investigation.

(5) Availability of supporting personnel in the institution to successfully administer the instrument contract and technically monitor the fabrication.

(6) Status of development of the instrument. What additional development is needed. Areas that need further design or in which unknowns are present.

(7) Method by which the investigator proposes to:

(a) Prepare instrument specifications.

(b) Review development progress.

(c) Review design and fabrication changes.

(d) Participate in testing program.

(e) Participate in final checkout and calibration.

(f) Provide for integration of instrument.

(g) Support the flight operations.

(h) Coordinate with co-investigators, other related investigations, and the payload integrator.

(i) Assure safety, reliability, and quality.

(j) Provide required support for Payload Specialist(s), if applicable.

(8) Planned participation by small and/or minority business in any subcontracting for instrument fabrication or investigative support functions.

2. *Facilities and equipment.* All major facilities, laboratory equipment, and ground-support equipment (GSE) (including those of the investigator's proposed contractors and those of NASA and other U.S. Government agencies) essential to the experiment in terms of its system and subsystems are to be indicated, distinguishing insofar as possible between those already in existence and those that will be developed in order to execute the investigation. The outline of new facilities and equipment should also indicate the lead time involved and the planned schedule for construction, modification, and/or acquisition of the facilities.

3. *Additional guidelines applicable to non-U.S. proposers only.* The following guidelines are established for foreign responses to NASA's Announcement of Opportunity. Unless otherwise indicated in a specific announcement, these guidelines indicate the appropriate measures to be taken by foreign proposers, prospective foreign sponsoring agencies, and NASA leading to the selection of a proposal and execution of appropriate arrangements. They include the following:

a. Where a "Notice of Intent" to propose is requested, prospective foreign proposers should write directly to the NASA official designated in the Announcement of Opportunity and send a copy of this letter to the International Relations Division, Office of External Relations, Code XID, NASA, Washington, DC 20546, U.S.A.

b. Unless otherwise indicated in the Announcement of Opportunity, proposals will be submitted in accordance with this Appendix excluding cost plans. Proposals should be typewritten and written in English.

c. Persons planning to submit a proposal should arrange with an appropriate foreign governmental agency for a review and endorsement of the proposed activity. Such endorsement by a foreign organization indicates:

(1) The proposal merits careful consideration by NASA.

(2) If the proposal is selected, sufficient funds will be available to undertake the activity envisioned.

d. Proposals along with the requested number of copies and letters of endorsement from the foreign governmental agency must be forwarded to NASA in time to arrive before the deadline established for each Announcement of Opportunity. These documents should be sent to:

National Aeronautics and Space Administration, International Relations Division, Code XID, Office of External Relations, Washington, DC 20546, U.S.A.

e. All proposals must be received before the established closing date; those received after the closing date will be treated in accordance with NASA's provisions for late proposals. Sponsoring foreign government agencies may, in exceptional situations, forward a proposal directly to the above address if review and endorsement is not possible before the announced closing date. In such cases, NASA should be advised when a decision on endorsement can be expected.

f. Shortly after the deadline for each Announcement of Opportunity, NASA's International Relations Division will advise the appropriate sponsoring agency which proposals have been received and when the selection process should be completed. A copy of this acknowledgement will be provided to each proposer.

g. Successful and unsuccessful proposers will be contacted directly by the NASA Program Office coordinating the Announcement of Opportunity. Copies of these letters will be sent to the sponsoring Government agency.

h. NASA's International Relations Division will then begin making the necessary arrangements to provide for the selectee's participation in the appropriate NASA program. Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(1) A letter of notification by NASA.

(2) An exchange of letters between NASA and the sponsoring foreign governmental agency.

(3) An agreement or Memorandum of Understanding between NASA and the sponsoring foreign governmental agency.

B. *Cost Plan (U.S. Investigations Only).* The cost plan should summarize the total investigation cost by major categories of cost as well as by function.

1. The categories of cost should include the following:

a. *Direct Labor.* List by labor category, with labor hours and rates for each. Provide actual salaries of all personnel and the percentage of time each individual will devote to the effort.

b. *Overhead.* Include indirect costs, which because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Usually this is in the form of a percentage of the direct labor costs.

c. *Materials.* This should give the total cost of the bill of materials including estimated cost of each major item. Include lead time of critical items.

d. *Subcontracts.* List those over $25,000, specify the vendor and the basis for estimated costs. Include any baseline or supporting studies.

e. *Special Equipment.* include a list of special equipment with lead and/or development time.

f. *Travel.* List estimated number of trips, destinations, duration, purpose, number of travelers, and anticipated dates.

g. *Other Costs.* Costs not covered elsewhere.

h. *General and Administrative Expense.* This includes the expenses of the institution's general and executive offices and other miscellaneous expenses related to the overall business.

i. *Fee (if applicable).*

2. Separate schedules, in the above format, should be attached to show total cost allocable to the following:

a. Principal Investigator and other Investigators' costs.

b. Instrument costs.

c. Integration costs.

d. Data reduction and analysis including the amount and cost of computer time.

3. If the effort is sufficiently known and defined, a funding obligation plan should provide the proposed funding requirements of the investigations by quarter and/or annum keyed to the work schedule.

APPENDIX D TO APPENDIX I OF 1870.103—GLOSSARY OF TERMS AND ABBREVIATIONS ASSOCIATED WITH INVESTIGATIONS

Advisory Committee Subcommittee. Any committee, board, commission, council, conference, panel, task force; or other similar group, or any subcommittee or other subgroup thereof, that is not wholly composed of full-time Federal Government employees, and that is established or utilized by NASA in the interest of obtaining advice or recommendations.

Announcement of Opportunity (AO). A document used to announce opportunities to participate in NASA programs. Announcements are published in accordance with this Handbook.

AO Process. A term used to describe the program planning and procurement procedure used to acquire investigative effort, initiated by an AO.

Categorization. The process whereby proposed investigations are classified into four categories: synopsized here as Category I—recommended for immediate acceptance; Category II—recommended for acceptance but at a lower priority than Category I proposals; *Category III.* sound investigations requiring further development; *Category IV.* rejected.

Co-Investigator (Co-I). Associate of a Principal Investigator, responsible to the Principal Investigator for discrete portions or tasks of the investigation. A NASA employee can participate as a Co-I on an investigation proposed by a private organization.

Data Users. Participants in NASA programs, selected to perform investigations utilizing data from NASA payloads or facilities.

Experiments. Activities or effort aimed at the generation of data. NASA-sponsored experiments generally concern generation of data obtained through measurement of aeronautical and space phenomena or use of space to observe earth phenomena.

Federal Acquisition Regulation (FAR). The regulations governing the conduct of procurement.

Flight. That portion of the mission encompassing the period from launch to landing or launch to termination of the active life of spacecraft. The term shuttle "flight" means a single shuttle round trip—its launch, orbital activity, and return; one flight might deliver more than one payload. More than one flight might be required to accomplish one mission.

Flight Investigation. Investigation conducted utilizing aeronautical or space instrumentation.

Flight Opportunity. A flight mission designed to accommodate one or more experiments or investigations.

Guest Investigators. Investigators selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives. Sometimes referred to as Guest Observers.

Investigation. Used interchangeably with "Experiments."

Investigation Team. A group of investigators collaborating on a single investigation.

Investigator. A participant in an investigation. May refer to the Principal Investigator, Co-Investigator, or member of an investigation team.

Mission. The performance of a coherent set of investigations or operations in space to achieve program goals. (Example: Measure detailed structure of Sun's chromosphere; survey mineral resources of North America.)

NASA FAR Supplement (NFS). Procurement regulations promulgated by NASA in addition to the FAR.

NHB. NASA Handbook.

NMI. NASA Management Instruction.

Notice of Intent. A notice or letter submitted by a potential investigator indicating the intent to submit a proposal in response to an AO.

Payload. A specific complement of instruments, space equipment, and support hardware carried to space to accomplish a mission or discrete activity in space.

Peer Group. A gathering of experts in related disciplinary areas convened as a subcommittee of the Program Office Steering Committee to review proposals for flight investigations.

Peer Review. The process of proposal review utilizing a group of peers in accordance with the categorization criteria as outlined in this Handbook.

Principal Investigator (PI). A person who conceives an investigation and is responsible for carrying it out and reporting its results. A NASA employee can participate as a PI only on a government-proposed investigation.

Program. An activity involving human resources, materials, funding, and scheduling necessary to achieve desired goals.

Project. Within a program, an undertaking with a scheduled beginning and ending, which normally involves the design, construction, and operation of one or more aeronautical or space vehicles and necessary ground support in order to accomplish a scientific or technical objective.

Project Office. An office generally established at a NASA field installation to manage a project.

Selection Official. The NASA official designated to determine the source for award of a contract or grant.

Space Facility. An instrument or series of instruments in space provided by NASA to satisfy a general objective or need.

Steering Committee. A standing NASA sponsored committee providing advice to the Program Associate Administrators and providing procedural review over the investigation selection process. Composed wholly of full-time Federal Government employees.

Study Office. An office established at a NASA field installation to manage a potential undertaking which has not yet developed into project status.

Subcommittee. An arm of the Program Office Steering Committee consisting of experts in relevant disciplines to review and categorize proposals for investigations submitted in response to an AO.

Supporting Research and Technology (SR&T). The programs devoted to the conduct of research and development necessary to support and sustain NASA programs.

Team. A group of investigators responsible for carrying out and reporting the results of an investigation or group of investigations.

Team Leader. The person appointed to manage and be the point of contact for the team and who is responsible for assigning respective roles and privileges to the team members and reporting the results of the investigation.

Team Member. A person appointed to a team who is an associate of the other members of the team and is responsible to the team leader for assigned tasks or portions of the investigation.

Subpart 1870.2—NASA Research Announcement System

1870.201 Purpose.

It is NASA policy to encourage submission of research proposals relevant to agency requirements. The NASA Research Announcement (NRA) System is one means of implementing the policy by permitting the solicitation and competitive selection of research projects in accordance with statute while at the same time preserving the traditional concepts and understandings associated with NASA sponsorship of research.

1870.202 System content.

(a) The regulations governing the NRA System (see 1835.016-70) set forth the requirements for preparing, issuing, and processing NRAs.

(b) The system contains specific instructions for proposers. These instructions shall be included in the NRA, a form of broad agency announcement authorized at 1835.016.

1870.203 Instructions for responding to NRAs.

(a) The "Instructions for Responding to NASA Research Announcements for Solicited Research Proposals" document (prescribed in 1835.016-70(c)(4)) is set forth as Appendix I to this section 1870.203.

(b) This appendix may be reproduced locally as part of the NRA provided the following conditions are met:

(1) For each NRA the issuing office shall verify that the most recent version of Appendix I, as contained in the NFS, is used.

(2) The current text shall be reproduced verbatim; however, the issuing office may remove the NFS page headers and add the NRA number in order to identify the NRA to which the Appendix is attached. Any other change shall be treated as a deviation in accordance with 1801.400.

Appendix I to 1870.203—Instructions for Responding to NASA Research Announcements for Solicited Research Proposals

INSTRUCTIONS FOR RESPONDING TO NASA RESEARCH ANNOUNCEMENTS FOR SOLICITED RESEARCH PROPOSALS (AUG 1988)

1. Foreword

a. NASA depends upon industry, educational institutions and other nonprofit organizations for most of its research efforts. While a number of mechanisms have been developed over the years to inform the research community of those areas in which NASA has special research interests, these instructions apply only to "NASA Research Announcements," a form of "broad agency announcement" described in 6.102(d)(2) and 35.016 of the Federal Acquisition Regulation (FAR). The "NASA Research Announcement (NRA)" permits competitive selection of research projects in accordance with statute while at the same time preserving the traditional concepts and understandings associated with NASA sponsorship of research.

b. These instructions are Appendix I to 1870.203 of the NASA Federal Acquisition Regulation Supplement.

2. Policy

a. NASA fosters and encourages the submission of research proposals relevant to agency mission requirements by solicitations, "NASA Research Announcements," which describe research areas of interest to NASA. Proposals received in response to an NRA will be used only for evaluation purposes.

b. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

c. A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

3. Purpose

These instructions are intended to supplement documents identified as "NASA Research Announcements." The NRAs contain programmatic information and certain "NRA-specific" requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

4. Relationship to Award

a. A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded on the basis of a proposal submitted in response to an NRA. NASA does not have separate "grant proposal" and "contract proposal" categories, so all proposals may be prepared in a similar fashion. NASA will determine the appropriate instrument.

b. Grants are generally used to fund basic research in educational and nonprofit institutions, while research in other private sector organizations is accomplished under contract. Additional information peculiar to the contractual process (certifications, cost and pricing data, facilities information, etc.) will be requested, as necessary, as the procurement progresses. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement (NHB 5100.4). Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NHB 5800.1).

5. Conformance to Guidance

a. NASA does not have any mandatory forms or formats for preparation of responses to NRAs; however, it is requested that proposals conform to the procedural and submission guidelines covered in these instructions. In particular, NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

b. In order to be considered responsive to the solicitation, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation. NASA reserves the right to reject any or all proposals received in response to an NRA when such action is considered in the best interest of the Government.

6. NRA-Specific Items

a. Several proposal submission items will appear in the NRA itself. These include: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information.

b. Items included in these instructions may be supplemented by the NRA, as circumstances warrant. Examples are: technical points for special emphasis; additional evaluation factors; and proposal length.

7. Proposal Contents

a. The following general information is needed in all proposals in order to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

b. Transmittal Letter or Prefatory Material. (1) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(2) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(3) Type of organization: e.g., profit, nonprofit, educational, small business, minority, women owned, etc.;

(4) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(5) Identification of any other organizations that are currently evaluating a proposal for the same efforts;

(6) Identification of the specific NRA, by number and title, to which the proposal is responding;

(7) Dollar amount requested of NASA, desired starting date, and duration of project;

(8) Date of submission; and

(9) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

c. Restriction on Use and Disclosure of Proposal Information. It is NASA policy to use information contained in proposals for evaluation purposes only. While this policy does not require that the proposal bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Notice

*Restriction on Use and Disclosure of Proposal Information.*The information (data) contained in [*insert page numbers or other identification*] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

d. Abstract. Include a concise (200-300 word if not otherwise specified in the NRA) abstract describing the objective of the proposed effort and the method of approach.

e. Project Description. (1) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge in the field; and relation to previous work done on the project and to related work in progress elsewhere.

The statement should outline the general plan of work, including the broad design of experiments to be undertaken and an adequate description of experimental methods and procedures. The project description should be prepared in a manner that addresses the evaluation factors in these instructions and any additional specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Note, however, that subcontracting significant portions of a research project is discouraged.

(2) When it is expected that the effort will require more than one year for completion, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should, of course, be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

f. Management Approach. For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and any necessary arrangements for ensuring a coordinated effort should be described. Aspects of any required intensive working relations with NASA field centers that are not logical inclusions elsewhere in the proposal should be described in this section.

g. Personnel. The principal investigator is responsible for direct supervision of the work and participates in the conduct of the research regardless of whether or not compensation is received under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

h. Facilities and Equipment. (1) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use on the project.

(2) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative to purchase. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for both research and non-research purposes should be explained.

i. Proposed Costs. (1) Proposals should contain cost and technical parts in one volume: do not use separate "confidential" salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all manpower data in terms of man-months or fractions of full-time.

(2) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases. (Standard Form 1411 may be used).

(3) Allowable costs are governed by FAR Part 31 and the NASA FAR Supplement Part 1831 (and OMB Circulars A-21 for educational institutions and A-122 for nonprofit organizations).

j. Security. Proposals should not contain security classified material. However, if the proposed research requires access to or may generate security classified information, the submitter will be required to comply with applicable Government security regulations.

k. Current Support. For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

l. Special Matters. (1) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(2) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

8. Renewal Proposals

a. Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. It is not necessary that a renewal proposal repeat all of the information that was in the original proposal upon which the current support was based. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which extended support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

b. NASA reserves the right to renew an effort either through amendment of an existing contract or by a new award.

9. Length

Unless otherwise specified in the NRA, every effort should be made to keep proposals as brief as possible, concentrating on substantive material essential for a complete understanding of the project. Experience shows that few proposals need exceed 15-20 pages. Any necessary detailed information, such as reprints, should be included as attachments rather than in the main body of the proposal. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of "one-of-a-kind" attachments; their availability may be mentioned in the proposal.

10. Joint Proposals

a. Some projects involve joint efforts among individuals in different organizations or mutual efforts of more than one organization. Where multiple organizations are involved, the proposal may be submitted by only one of them. In this event, it should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

b. Where a project of a cooperative nature with NASA is contemplated, the proposal should describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. However, the proposal must be confined only to that which the proposing organization can commit itself. "Joint" proposals which purport to specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

11. Late Proposals

A proposal or modification thereto received after the date or dates specified in an NRA may still be considered if the selecting official deems it to offer NASA a significant technical advantage or cost reduction.

12. Withdrawal

Proposals may be withdrawn by the proposer at any time. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

13. Evaluation Factors

a. Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

b. Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

c. Evaluation of its intrinsic merit includes the consideration of the following factors, none of which is more important than any other:

(1) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(3) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(4) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art.

d. Evaluation of the cost of a proposed effort includes the consideration of the realism and reasonableness of the proposed cost and the relationship of the proposed cost to available funds.

14. Evaluation Techniques

Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases, however, proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house where NASA has particular competence; others are evaluated by a combination of in-house people and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. Regardless of the technique, the final decisions are always made by a designated NASA selecting official. A proposal which is scientifically and programmatically meritorious, but which is not selected for award during its initial review under the NRA may be included in subsequent reviews unless the proposer requests otherwise.

15. Selection for Award

a. When a proposal is not selected for award, and the proposer has indicated that the proposal is not to be held over for subsequent reviews, the proposer will be notified that the proposal was not selected for award. NASA will notify the proposer and explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

b. When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation with the submitter. Formal RFPs are not used to obtain additional information on a proposal selected under the NRA process. However, the contracting officer may request certain business data and may forward a model contract and other information which will be of use during the contract negotiation.

16. Cancellation of NRA

NASA reserves the right to make no awards under this NRA and, in the absence of program funding or for any other reason, to cancel this NRA by having a notice published in the "Commerce Business Daily." NASA assumes no liability for cancelling the NRA or for anyone's failure to receive actual notice of cancellation. Cancellation may be followed by issuance and synopsis of a revised NRA, since amendment of an NRA is normally not permitted.

Subpart 1870.3—NASA Source Evaluation

1870.301 Purpose.

The acquisition of goods and services is among the most important activities that NASA performs and demands the agency's best management efforts. Therefore, the source evaluation and selection procedures must emphasize the application of sound judgment to the problems of source evaluation and assure that Source Evaluation Boards (SEB) conduct their activities impartially and efficiently in ways which will effectively accomplish the source evaluation task.

1870.302 Regulations.

The basic regulations governing source selection using the SEB process appear at 1815.613-71. Detailed operating instructions and procedures for the evaluation and negotiation of procurements by Source Evaluation Boards appear at 1870.303. These instructions provide general and specific policies and procedures for SEB's evaluating offerors' proposals and related capabilities. They are designed for use by procurement personnel and by the wide range of individuals who participate in the SEB process. The instructions will also be of help to the public in understanding NASA's source selection policies and procedures.

1870.303 Source Evaluation Board Procedures.

(a) SEB procedures are prescribed by Appendix I to this section 1870.303.

(b) NASA may reprint Appendix I as a separate document, which may be referred to as the NASA Source Evaluation Board Handbook, for sale and/or distribution provided the following conditions are met:

(1) The issuance date ("cover date") of the Handbook shall be the date of the NASA FAR Supplement version from which the text is extracted.

(2) With the exception of availability, distribution and other special pref-

atory notices, any subsequent modification in the text shall be preceded by a change to the NASA FAR Supplement 1870.303, Appendix I.

(3) The following notice shall be included in the prefatory material of the Handbook:

Important Notice

This Handbook is a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.303) section 1870.303, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.303, Appendix I, without issuing a new edition of this Handbook. Any such changes will be published in the Federal Register; however, it is anticipated that such changes will be rare, unless mandated by statute or unusual circumstances. In the event of apparent conflict between this Handbook and the NFS, the NFS shall govern.

Appendix I to 1870.303—NASA Source Evaluation Board Procedures (Handbook)

NASA Source Evaluation Board Handbook

Preface

The acquisition of goods and services is among the most important activities that NASA performs and demands our best management efforts. The acquisition system we use must be such that individuals performing within it are challenged to high standards of performance because they know that their efforts contribute to and form part of the Government's decision-making process.

The source evaluation and selection process covered by this handbook exemplifies our efforts to emphasize the application of sound judgment to the problems of source evaluation. In addition, the handbook emphasizes the responsibility which line and staff management retains to assure that Source Evaluation Boards (SEB's) conduct their activities impartially and efficiently in ways which will effectively accomplish the source evaluation task.

The process provides for an equitable and comprehensive evaluation of offerors' proposals to assist the Source Selection Official (SSO) in selecting the source(s) whose proposal(s) presents the highest probability of quality performance to best meet NASA's requirements at a realistic cost/price. This handbook provides guidance and general and specific policies and procedures for SEB's evaluating offerors' proposals and related capabilities in negotiated procurements. Its intention is to encourage the exercise of sound judgment in the many important aspects of the process. SEB's are expected to apply common sense in determining appropriate variations and adaptations necessary in individual situations, provided that these do not constitute a departure from basic concepts and intent. Substantive deviations may be authorized only by the Assistant Administrator for Procurement.

While this handbook is intended primarily for NASA use, it is also available to the public so that NASA's source selection policies and procedures can be understood by all participants in the process.

The provisions of this handbook are applicable to all elements of NASA and are to be implemented on any Request for Proposal (RFP) subject to evaluation by an SEB and issued on or after October 1, 1988. The source selection policies and procedures set forth in this handbook are to be implemented in accordance with the Federal Acquisition Regulation (FAR) Subpart 15.6 and NASA/FAR Supplement (NFS) 1815.613. However, the procedures in this handbook may be used in any other competitively negotiated procurement where the SSO determines it desirable to do so.

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CHAPTER 1—KEY PARTICIPANTS IN THE SOURCE EVALUATION BOARD PROCESS

100 Introduction

This chapter describes the role of key participants in the Source Evaluation Board (SEB) process, including cognizant line and staff management, the Source Evaluation Board and the Source Selection Official.

101 Cognizant Management Responsibilities

1. The SEB process described in this handbook shall be used for major procurements as defined by NFS 1815.613-71(a). The process is used to accomplish and document the source evaluation and selection function.

2. Upon request of the cognizant Installation Procurement Officer, as a part of the Master Buy Plan procedure, the Assistant Administrator for Procurement or an appropriate designee may consider streamlining these source selection procedures for a particular procurement. This decision, granting a deviation to the formal SEB process, will be communicated to the cognizant Procurement Officer as a part of the written response to the installation regarding the Master Buy Plan submission. Requests for use of streamlined procedures may also be submitted independent of the Master Buy Plan procedure.

3. When the SEB process is determined to be applicable in accordance with the NFS, the specific SEB procedures detailed in this handbook are employed to—

a. Prepare a solicitation that accurately conveys to offerors the technical, schedule, cost, and other contractual requirements of the procurement;

b. Ensure equitable and comprehensive evaluation of the competitors' proposals;

c. Ensure fairness and freedom from outside influence throughout the process;

d. Ensure selection of the source(s) whose performance can be expected to be most advantageous to the Government with respect to the Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations factors considered; and

e. Protect the business confidential and proprietary information contained in proposals submitted to the Government for evaluation.

4. Appropriate cognizant line and staff management shall—

a. Establish each SEB with fully qualified Government personnel possessing broad experience and the professional skills and knowledge required for proper evaluation and assessment of offerors' proposals;

b. Ensure all personnel assigned to the SEB are unencumbered by other assignments which compete with SEB activities and, further, ensure that personnel assigned to the SEB are officially appointed to the activity for the duration of the SEB;

c. Ensure the SEB is provided all current NASA policies and procedures relevant to SEB operation;

d. Ensure acquisition strategy and planning objectives are achieved as reflected in the acquisition's requirements;

e. Ensure the SEB works in harmony with the needs and objectives of the requiring activity;

f. Concur in the substance and weight of evaluation factors, subfactors, and elements;

g. Ensure the RFP is complete, clear, and consistent with agency objectives and with the needs of the activity requiring the procurement, that the procedures for evaluation and selection are clearly set forth, and that the offeror is not burdened with unnecessary requests for data not pertinent to source selection;

h. Ensure appropriate actions are taken, consistent with the FAR and NFS, to obtain full and open competition in the selection process, or to obtain appropriate approvals for exceptions;

i. Establish an SEB advisory group or individual at the field installation to ensure proper source selection procedures are employed; and

j. Ensure an environment exists in which evaluation and selection activities can be effectively conducted.

5. For purposes of this handbook, in cases where the SSO is at the Headquarters level, "cognizant line and staff management," as addressed in subparagraph 4, includes—

a. The NASA Acquisition Executive for systems designated as major acquisitions under NMI 7100.14, "Major System Acquisitions";

b. Officials-in-Charge of the cognizant Headquarters Program and Headquarters Offices or their Deputies. (See NMI 1101.2, "NASA Organization and Definition of Terms.");

c. The cognizant Field Installation Director and Deputy/Associate Director;

d. The Field Installation Project Manager;

e. The Assistant Administrator for Procurement;

f. The General Counsel and/or Associate General Counsel (Contracts);

g. The Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance (SRM&QA);

h. The Field Installation Principal Official-in-Charge of Administration, when such a position exists;

i. The Field Installation Chief Counsel; and

j. The Field Installation Procurement Officer.

6. When the Administrator or an Official-in-Charge of a Headquarters Office is the SSO, selected cognizant line and staff management, including the General Counsel or designee and the Assistant Administrator for Procurement, will advise the SSO in executive session, at the conclusion of the presentation of the SEB report, regarding their views concerning the SEB's findings. Management personnel are encouraged to seek the advice of the General Counsel, the Assistant Administrator for Procurement, and any other responsible Headquarters official regarding any SEB-level procurement problem where their participation would be helpful in the conduct of the SEB process.

102 Source Selection Official

1. The SSO is the senior agency official responsible on a particular procurement for proper and efficient conduct of the source selection process and for making the final source selection decision. It is the SSO's responsibility to decide which of the proposals submitted in response to the solicitation would prove most advantageous to the Government, all RFP evaluation factors considered. The decision must reflect the SSO's determination of relative quality and suitability of what is proposed by each offeror in light of the Government's stated requirements and the confidence level associated with the offeror's ability to accomplish what is proposed. This includes an assessment of the probable cost of each proposal in the competitive range. Trade-off judgments may be required among the evaluation factors (Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations). For procurements designated as Headquarters selections, the SSO will be identified as a part of the Master Buy Plan process. For field installation selections, the Field Installation Director will serve as the SSO.

2. The SSO will—

a. Approve the substance and weight of evaluation factors, subfactors, and elements prior to release of the RFP, or delegate this responsibility to appropriate management personnel;

b. Appoint the SEB Chairperson and members, both voting and nonvoting, except when the Administrator will serve as the SSO, in which case the Official-in Charge of the cognizant Headquarters Program Office will appoint the SEB Chairperson and members;

c. Provide the SEB with appropriate guidance and special instructions to conduct the evaluation and selection procedures; and

d. Make the final selection decision. Selection for final negotiations will be based on an integrated assessment of each offeror's proposal, taking into consideration the SEB's report and advice from senior officials.

103 Source Evaluation Board

1. The solicitation, receipt, and evaluation of proposals will be implemented by the SEB in accordance with the procedures outlined in this handbook. It is paramount that the SEB's evaluation not be influenced by persons outside the SEB process, whether or not such persons are NASA employees. The SEB is established with special status and shall be staffed with competent people fully qualified to identify the strengths, weaknesses, and risks associated with proposals submitted in response to the Government solicitation. The SEB assists the SSO in decision making by providing expert analyses of the offerors' proposals in relation to the evaluation factors, subfactors, and elements contained in the solicitation.

2. In particular, the SEB shall—

a. Conduct an in-depth review and evaluation of each proposal against the solicitation requirements and the approved evaluation factors, subfactors, and elements;

b. Provide an integrated assessment of each offeror's probable performance relative to the evaluation factors, subfactors, and elements contained in the solicitation related to Mission Suitability;

c. Perform cost analysis by reviewing and analyzing each offeror's proposed costs by individual cost element to determine the validity and reasonableness of the proposed costs. Perform price analysis by comparing each offeror's proposed price (when it is feasible to do so) against the independent Government cost estimate and/or prior experience and knowledge regarding similar efforts to assist in determination of a fair and reasonable price. Develop a probable cost for each proposal within the competitive range;

d. Evaluate the relevant experience and past performance of each offeror, including the relevant experience and past performance of proposed subcontractors intended to perform a major role in accomplishment of procurement objectives or to participate in a substantive manner;

e. Evaluate proposals under the Other Considerations factor included in the RFP and present the analysis of that factor as reflected in each offeror's proposal;

f. Ensure proper SEB procedures are implemented, including those necessary to prevent disclosure of source selection data;

g. Prepare and present the SEB report which accurately and clearly reflects the findings of the SEB.

NOTE.—The SEB is not to make recommendations for selection to the SSO. The SEB reports its findings, avoiding trade-off judgments among either the individual offerors or among the Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations evaluation factors.

CHAPTER 2—MEMBERSHIP, ORGANIZATION, AND RESPONSIBILITIES

200 General

This chapter sets forth NASA policy on membership, organization, and responsibilities of SEB's.

201 Membership

1. Composition

a. SEB's shall be comprised of qualified management, technical, scientific, contracting, and business experts including, where appropriate, SRM&QA representatives. Each SEB shall have a legal advisor.

b. While in general the SEB Chairperson, SEB members, and committee members are drawn from the cognizant installation, personnel from other NASA installations or other Government agencies may be used when their services are required in a particular area of expertise and would significantly contribute to the evaluation of proposals.

c. It is NASA policy to have proposals evaluated by the most competent technical and management sources available in NASA and the Jet Propulsion Laboratory (JPL). All personnel participating in evaluation proceedings shall be instructed to observe the restrictions in the FAR and NFS regarding personal conflicts of interest and the disclosure of information concerning the evaluation. Non-NASA personnel shall not serve as voting members of a NASA SEB.

d. In evaluating a proposal, the SEB may find that it is necessary to disclose the proposal (in whole or in part) outside the Government to meet its evaluation needs. When it is clearly necessary to disclose the proposal (in whole or in part) outside the Government, arrangements shall be made in accordance with NFS 1815.413-2.

e. It is desirable that voting members of the SEB include people who will have key assignments on the project to which the procurement is directed. However, it is important that this should be tempered to ensure objectivity and to avoid an improper balance. It may even be appropriate to designate a management official from outside the project as SEB Chairperson.

f. SEB membership normally need not exceed seven voting members, including the Chairperson. If additional support is needed, the use of committees and panels is authorized. The number of such supporting personnel shall be kept as small as the nature of the subject matter permits. Wherever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. Where this is not feasible, SEB membership and duties are to take precedence over other duties.

g. The number of nonvoting ex officio (advisory) members shall be kept as small as the nature of the procurement allows. Ex officio members should be selected for the experience and expertise they can provide to the SEB. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in paragraph 3b should be carefully considered.

2. Designation

a. Designation of the SEB Chairperson and members, both voting and nonvoting, shall be by the SSO except when the Administrator will serve as the SSO, in which case the designation shall be by the Official-in-Charge of the cognizant Headquarters Program Office. The designation letter will be addressed to the cognizant Field Installation Director when the SSO is at the Headquarters level or to the SEB Chairperson when the SSO is the Field Installation Director. The letter shall be prepared in accordance with the sample letter in Appendix A and forwarded for signature to the SSO or the cognizant Official-in-Charge of the Headquarters Program Office early in the procurement cycle, but not later than coordination and approval of the procurement plan. Prior to signature, concurrence by the Headquarters Office of Procurement (Code HS) is required when the SSO is at the Headquarters level or by the cognizant Field Installation Procurement Officer when the SSO is the Field Installation Director.

b. When the Administrator or the Official-in-Charge of the cognizant Headquarters Program Office is the SSO, résumés of voting members shall be provided along with the proposed designation letter. These résumés shall include functional title, grade level and related SEB experience.

3. Voting and nonvoting Members

a. The following people shall be on all SEB's and designated as voting members:

(1) Chairperson.

(2) A senior, key technical representative for the project.

(3) An experienced procurement representative.

(4) A senior SRM&QA representative, as appropriate.

(5) Committee chairpersons (except where this imposes an undue workload).

All voting members of the SEB shall have equal status as rating officials.

b. The following people shall be on all SEB's as nonvoting ex officio members:

(1) Assistant Administrator for Procurement and designee from the Program Operations Division (Code HS) when either an Official-in-Charge of a Headquarters Program Office or the Administrator is the SSO.

(2) General Counsel and/or the Associate General Counsel (Contracts) when either an Official-in-Charge of a Headquarters Program Office or the Administrator is the SSO.

(3) Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance or designee when either an Official-in-Charge of a Headquarters Program Office or the Administrator is the SSO.

(4) Director of the cognizant Field Installation or designee when either an Official-in-Charge of a Headquarters Program Office or the Administrator is the SSO.

(5) Cognizant Program Director or designee when an Official-in-Charge of a Headquarters Program Office is the SSO.

(6) Official-in-Charge of the cognizant Headquarters Program Office or a designee when the Administrator is the SSO.

(7) Chairpersons of SEB committees when they are non-voting members.

(8) The Procurement Officer of the installation, unless designated a voting member.

(9) The contracting officer responsible for the procurement, unless designated a voting member.

(10) The Chief Counsel and/or designee of the installation.

(11) The SEB recorder.

c. The Assistant Administrator for Procurement, the Code HS Director and cognizant procurement analyst, and the Associate General Counsel (Contracts) have access to all SEB activity by virtue of their positions in the agency.

d. The Associate General Counsel (Contracts) will assign legal advisors to Headquarters SEB's. The installation Chief Counsels will assign legal advisors to SEB's at their installations. The assigned advisor will provide legal advice and counsel on all matters pertaining to the procurement. Upon appointment of the SEB, the Associate General Counsel (Contracts) or designee, or Chief Counsel or designee, as appropriate, will brief SEB personnel on required standards of conduct.

e. Nonvoting ex officio members may state their views and contribute to the discussions in SEB deliberations, but they may not participate in the actual rating process. However, the SEB recorder should be present during rating sessions. The Chairperson is responsible for determining appropriate attendance at SEB meetings and is encouraged to seek the advice and counsel of nonvoting ex officio members whenever necessary without convening a special meeting.

202 Organization

The organization of an SEB is tailored to the requirements of the particular procurement. This can range from the simplest situation, where the SEB conducts the evaluation and fact-finding without the use of committees or panels, to a highly complex situation involving a major acquisition where two or more committees are formed and these, in turn, are assisted by special panels in particular areas. Appropriate organization somewhere between these two extremes is generally expected but in all cases the number of committees or panels should be kept to a minimum consistent with the requirements of the procurement.

203 Responsibilities

1. The SEB is the central group in the source evaluation process. Its function is to carry out the activities set forth in this handbook, culminating in final evaluation of all proposals and its report to the SSO. The SEB's evaluation is based on all available information, including proposals, committee and panel reports, written and/or oral discussions, personal knowledge of the members in the area of experience and past performance, and other appropriate reference checks. Subject to reviews by the SSO and cognizant management personnel as may be required, the SEB establishes evaluation factors, subfactors, elements and their relative importance; generates qualification standards (where applicable); and reviews and approves the RFP prior to issuance. The SEB reviews offeror satisfaction of applicable qualification standards, if any, and makes an identification of unacceptable proposals. It provides an initial evaluation of acceptable proposals sufficient for determination of the competitive range and participates in written and/or oral discussions held with all offerors in the competitive range. The SEB shall not delegate its evaluation responsibility in whole or in part. Findings of committees or panels must be

reviewed by the SEB, with its own collective judgment being applied in arriving at the SEB evaluation findings reported to the SSO.

2. The SEB Chairperson is the principal operating executive of the SEB. This carries with it a responsibility broader in scope and including more requirements for coordination across more different specialized disciplines and through more diverse management channels than is expected in most management situations. The Chairperson is expected to manage the team efficiently without compromising the validity of the findings provided to the SSO as the basis for a sound selection decision.

3. The SEB Recorder functions as the principal administrative assistant to the SEB Chairperson. The duties and responsibilities of the position are as follows:

a. Attends all SEB meetings and serves as principal assistant to the SEB Chairperson.

b. Obtains secure work areas for conduct of SEB activity and develops and implements procedures for controlling access and safeguarding SEB proceedings and documentation.

c. Obtains materials, supplies, and equipment needed by the SEB.

d. Arranges for preparation, reproduction, control, and distribution of material relating to the activity of the SEB and its committees.

e. Prepares and distributes the agenda for SEB meetings.

f. Obtains and distributes current applicable procedures, policies, and instructions to the SEB and committee members and others involved.

g. Records the substantive issues discussed.

h. Follows up on action items assigned to SEB members to ensure no delays in the SEB schedule will occur.

i. Obtains the SEB Chairperson's approval of SEB minutes. Provides copies to all voting SEB members and/or nonvoting members, as directed by the SEB Chairperson. Retains the original copy of the minutes and incorporates them into an official record book.

j. Assists in preparation and assembly of the SEB's report of findings and presentation charts and arranges for reproduction and distribution.

k. Destroys all duplicate material in excess of the SEB's need or retains material, as defined by the contracting officer, the SEB, and/or the SSO.

l. After formal selection announcement, accumulates, packages, and forwards documentation pertinent to the SEB's work to the cognizant contracting officer for retention throughout the life of the contract.

m. At the conclusion of all SEB activity, surveys the area where SEB activity occurred and arranges for the return of equipment and materials, as appropriate.

4. An SEB Committee functions as a fact-finding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). It is comprised of people well-versed and experienced in each of the major disciplines under its aegis. For example, a "Management Committee" could include experts in such areas as organization, pricing, personnel, labor, contracting, and facilities operation. The committee examines in detail each proposal, or portion thereof, assigned by the SEB. It evaluates such proposals or excerpts in accordance with the approved evaluation factors, subfactors, and elements and submits a written report to the SEB summarizing its evaluation. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings.

5. Committee chairpersons shall, with respect to their committees, exercise the same responsibility for administrative and procedural matters as does the SEB Chairperson for the SEB.

6. An SEB panel functions as a fact-finding arm of the committee in a specialized area of the committee's responsibilities. Panels are established when a particular area requires deeper analysis than can be provided by individual members of the committee.

7. a. All personnel involved in SEB activities are responsible for complying with the requirements of this handbook and other applicable regulations. Accordingly, they are advised to seek counsel and guidance from appropriate personnel, such as: the SEB Chairperson, the SEB procurement voting member, the contracting officer and/or the SEB legal advisor as well as any cognizant installation SEB advisory group with respect to any questions concerning compliance with these requirements. The Chairperson shall require each SEB, committee, and panel member to be familiar with the provisions of NHB 1900.1, "Standards of Conduct for NASA Employees," regarding conflict of interest and to inform the Chairperson in writing if, in the opinion of the member, their participation presents a real or apparent conflict of interest. In addition, the SEB Chairperson shall ensure that each SEB, committee, and panel member has filed a completed NASA Form 1270, "Confidential Statement of Employment and Financial Interests." Code HS procurement analysts will comply with the necessary disclosure requirements and will sign the necessary certificates on an annual basis to cover all SEB activities that the analyst may participate in throughout the year. Completed NASA Form 1270's from Code HS personnel will be generated and re-

viewed at the Headquarters level and will remain on file in the Office of General Counsel.

b. Prior to selection and announcement of an offeror for final negotiations, NASA personnel shall not reveal any information concerning the evaluation to anyone not participating in the same evaluation proceedings and then only to the extent such information is required by such proceedings and approved by the SSO or designee.

c. Subsequent to selection and announcement of an offeror for final negotiations, information concerning SEB proceedings and data will be made available to others within NASA only when the requester demonstrates a need to know for a NASA purpose. Information will be made available to persons outside NASA, including other Government agencies, only when such disclosure is concurred in by the Office of General Counsel. title 18, U.S. Code, section 1905, prohibits any officer or employee of the United States from disclosing or divulging certain kinds of business confidential and trade secret information unless authorized by law. Possible penalties upon conviction include imprisonment of up to 1 year, a fine of not more than $1,000, and removal from the Federal Service.

CHAPTER 3—EVALUATION FACTORS, SUBFACTORS AND ELEMENTS

300 General

1. This chapter describes the factors, subfactors, and elements used in evaluation of proposals and discusses the manner in which the SEB will develop, describe, and structure such factors, subfactors, and elements.

2. The SEB's responsibility is to provide analysis of proposals to aid the SSO in selecting the offeror(s) who best meets the Government's requirements at a reasonable cost.

3. In making a selection, the SSO normally considers four evaluation factors: a. Mission Suitability (which reflects how well the offerors can be expected to perform the work from a technical and management perspective); b. Cost (which reflects what it will probably cost the Government to do business with the offerors); c. Relevant Experience and Past Performance (which reflects the amount and quality of previous work accomplished by the offerors comparable to the work to be performed under the procurement being evaluated); and d. Other Considerations (which are those considerations, stated in the RFP, other than Mission Suitability, Cost, and Relevant Experience and Past Performance that can affect contract performance).

4. Performing the proposed work properly (Mission Suitability) is always important, and so is the probable cost of performing that work. Probable cost is not necessarily the offeror's estimate of costs; rather, it is the SEB's assessment of what the proposed work is likely to cost. Depending on circumstances, relevant experience and past performance or other considerations may or may not be of prime importance.

5. The SEB evaluates proposals with respect to the four evaluation factors, as follows:

a. *Mission Suitability.* This factor indicates for each offeror, the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Because this factor can be highly technical and must be integrated in order to convey an overall evaluation of relative merit, Mission Suitability and its supporting subfactors shall be numerically weighted and scored. Elements may or may not be numerically weighted and scored.

b. *Cost.* This factor evaluates what each offeror's proposal will probably cost the Government should it be selected for negotiations leading to award. Proposed costs are analyzed to determine the probable "cost of doing business" based upon the offeror's proposed approach. Further, this analysis identifies and assesses the impact of features that cause a proposal to cost more or less than other proposals. (See paragraph 302 for detailed coverage.) Cost is not numerically weighted or scored.

c. *Relevant Experience and Past Performance.* This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant procurement. The Relevant Experience and Past Performance factor provides an opportunity to evaluate the quality of goods and services provided by the offeror(s) to the agency and other Government organizations. The agency has acquired a substantial amount of firsthand experience and past performance data over a variety of program and contract efforts. Evaluation of this factor also utilizes relevant experience and past performance data from programs acquired by other Governmental organizations, covering both prime and subcontractor performance. The Relevant Experience and Past Performance factor is not numerically weighted or scored.

d. *Other Considerations.* This factor includes those considerations other than Mission Suitability, Cost, and Relevant Experience and Past Performance. They include, but are not limited to, such items as: financial condition, labor relations considerations, small and small disadvantaged business considerations, and geographic distribution of subcontracts. Other Considerations is not numerically weighted or scored.

6. Mission Suitability is the only factor which is numerically weighted (normally 1000 points) and scored. Further, each Mission Suitability subfactor is numerically weighted and scored. The sum of the subfactor weights will total the weight of the Mission Suitability factor. A subfactor may, at the discretion of the SEB, be divided into discrete elements which, in total, comprise the subfactor evaluation area. If deemed conducive to the evaluation process, the SEB may weigh and score individual elements of a subfactor. The sum of the weights of the individual elements will equal the weight of the subfactor.

7. The general format for inclusion of the factors, subfactors, and elements in the RFP are:

a. Factor (numerically scored)—Mission Suitability Grouping/Category (not numerically scored)—i.e., Technical or Management (optional)
 (1) Subfactor (numerically scored)
 (2) Subfactor (numerically scored)
 (3) Subfactor (numerically scored)
 Element (optional). May or may not be numerically scored.

b. Factor (not numerically scored)—Cost

c. Factor (not numerically scored)—Relevant Experience and Past Performance

d. Factor (not numerically scored)—Other Considerations

301 Mission Suitability

1. Evaluation Subfactors

a. Evaluation subfactors are the weighted areas within the Mission Suitability factor that further identify, for proposal preparation and evaluation purposes, the content of the factor. Examples of Mission Suitability subfactors found by experience to be relevant to many procurements are: Understanding of the Requirement; Management Plan; Key Personnel; Corporate or Company Resources; and Excellence of Proposed Design for hardware procurements. However, citation of these specific subfactors is not intended to be restrictive or all inclusive. The nature and thrust of the requirements and objectives of the procurement may logically call for the use of some subfactors titled and described in a somewhat different manner than those described below:

(1) *Understanding of the Requirement.* An offeror's proposal reflects how well the offeror comprehends the work and the data requirements. The offeror's proposal should be examined and analyzed to evaluate the offeror's understanding of the requirements set forth in the RFP. Understanding of the requirement can be evaluated as a separate subfactor or can be evaluated as an element to be considered as a part of the evaluation of each subfactor. Although costs are analyzed separately from Mission Suitability, they may be significant in indicating an offeror's understanding of the resources, human and material, required for performance of the contract. Accordingly, technical personnel assigned to committees or panels, in evaluation of the Mission Suitability factor pursuant to the weighted subfactors and elements, may be given access to the cost proposals or portions of the cost proposals to help determine the offeror's understanding of the requirements of the RFP. Such cost information may also help them to assess the validity of the offeror's approach to performing the work in accordance with the requirements. Cost realism, or the lack thereof, should enter into the SEB's assessment of the measure of understanding possessed by each offeror. Normally this would entail a consideration of cost realism in the evaluation of all subfactors and elements wherein understanding is an essential concept. Similarly, an offeror's justification or rationale for proposed costs can give insight into how well the work to be performed is understood.

(2) *Management Plan.* (a) The offeror's management plan sets forth the offeror's approach for efficiently managing the work as demonstrated by the proposed organization, the recognition of essential management functions, and the effective overall integration of these functions.

(b) The management plan describes the project organization proposed for the work, including internal operations and lines of authority, together with external interfaces and relationships with the Government, major subcontractors, and associate contractors. When properly prepared, the authority of the project manager, the project manager's relationship to the next echelon of management, and the project manager's command of company resources can be ascertained from the management plan. Likewise, the management plan provides schedules necessary for the logical and timely pursuit of the work, accompanied by a description of the offeror's work plan.

(3) *Excellence of Proposed Design.* In hardware acquisition, design of the product is generally a major aspect of competition. In order to arrive at an informed judgment, the SSO may require the SEB's evaluation of the merits of competing designs in relationship to the stated requirement. In evaluating the proposed designs, the SEB should consider the resources required to perform the work inherent in the differing designs. Evaluation of design may extend to whatever subsystem level is deemed appropriate by the SEB and may include producibility, reliability, maintainability, and, as applicable, warranties.

(4) *Key Personnel.* (a) Thorough evaluation of proposed key personnel is usually one of the most vital aspects of SEB activity.

(b) Experience demonstrates that the qualifications and performance of a few people—the top half-dozen or so directly involved managers—are extremely important to successful accomplishment of a contract. For evaluation purposes, the SEB may designate a separate subfactor entitled "Key Personnel." The SEB may define the number and identity of the key personnel for each offeror in the solicitation or may, subject to such limitations as the SEB deems appropriate to assure a reasonable basis for comparison, permit each offeror to define its own key personnel consistent with its proposed organization.

(c) Written résumés should be the baseline from which the evaluation of key personnel begins. Personal reference checks with people knowledgeable of an individual's training, experience, and performance constitute part of this baseline; these should be made at levels commensurate with the role of the individual in the program or project involved. However, the written and/or oral discussions, if conducted, will include all offerors in the competitive range and may be used to establish the relative merits of personnel proposed by each competing firm.

(d) The presentation to the SSO must clearly and concisely set forth the results of the evaluation and discussion, including the strengths and weaknesses of each offeror's key personnel.

(5) *Corporate or Company Resources.* The SEB should assess the resources proposed by each offeror in the general areas of human resources and facilities. For example, are the proper skill mixes and numbers of people to do the work being offered? Does the offeror propose facilities and, where required, special test equipment suitable and adequate to assure timely performance of the work? If the offeror does not possess adequate resources internally, is there a demonstration of the ability to acquire them through subcontracts or otherwise?

b. Elements that further define the content of each subfactor may be used. If individually numerically scored, these elements must be revealed in the RFP and must be assigned a specific weighting in the SEB's evaluation plan as a portion of the total points allotted. If they are not numerically scored, identification in the RFP is not required.

c. Establishment of evaluation subfactors, elements, and their weights requires judgment on a case-by-case basis. The subfactors and elements established and included in the RFP will then be utilized to determine each offeror's rating in Mission Suitability, including its understanding of the requirements, approach to the work, and the competence of personnel to be directly involved.

d. By carefully considering the requirement(s) to be satisfied through the products or services being procured, the SEB should be able to identify, analyze, and score discrete subfactors and, where appropriate, elements that determine how well the proposed product or service can be expected to meet the demands of the specific requirement(s). If individual subfactors, elements, and their weights are prudently established, the integrated scores of the subfactors and elements will give a representative picture of the merit of each offeror's Mission Suitability.

e. (1) In structuring evaluation subfactors and elements, emphasis should be placed on identification of significant discriminators. Proliferation of subfactors and elements results in a leveling or averaging out of scores over all proposals. Too many subfactors and elements are detrimental to effective evaluation of proposals. Further, clearly defining each evaluation subfactor and element helps to avoid overlap and redundancy. Avoiding such overlap assures an offeror is not scored in two or more areas for the same work.

(2) The following example conveys one approach to describing a subfactor, utilizing elements, in an RFP. Within the "management plan" subfactor the following elements may be determined by the SEB as most suitable to assess how well each offeror's overall management proposal would contribute to the probability of performing the contract in an excellent manner: (a) Management approach and organization; (b) staffing plan; and (c) management systems.

f. For each subfactor and element, there should be detailed instructions provided in the RFP's Section L, "Instructions, Conditions, and Notices to Offerors or Quoters," specifying what supporting information should be included in the proposals and the specific format to be used. This increases the probability that SEB evaluators will be provided necessary data in the format easiest to understand and evaluate relative to the subfactors and elements assigned for evaluation and assessment. Thought given to carefully structuring these instructions will generally result in proposals that address what the Government is most interested in relative to the work to be performed. For example, if the evaluation will utilize SEB committees or SEB panels, instructions for proposal preparation in the RFP's Section L that direct offerors to group together information required by such committees or panels will facilitate and accelerate the evaluation process.

g. Where the procurement involves acquisition of a major system under NMI 7100.14, "Major System Acquisitions," and the evaluation is to identify the most promising system design concept(s) to be selected for further exploration, the evaluation should also address the benefits to be derived by tradeoffs, where feasible, among technical performance, acquisition cost, ownership cost, and time to develop and procure.

2. Weighting of Factors, Subfactors, and Elements

a. Numerical weights shall be used for evaluating the Mission Suitability factor for competing offerors.

b. (1) Once the Mission Suitability subfactors are established, the SEB will determine the weight assigned to each. Likewise, if elements are established, the SEB will determine the weight, if any, assigned to each. The proposed subfactors, elements, and weights will be presented to the SSO or designee for approval. The weight assigned to each subfactor and, if numerically scored, each element must reflect its relative importance within the overall Mission Suitability factor. In conjunction, an evaluation plan covering not only Mission Suitability evaluation, but all evaluation factors (Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations), will be established by the SEB (see chapter 4). Mission Suitability evaluation subfactors, elements, and their weights shall be established and approved in advance of RFP issuance. The four factors and their supporting subfactors and, if numerically scored, elements shall be described in the RFP's Section M, "Evaluation Factors for Award," and the weights associated with the individual Mission Suitability subfactors and elements shall be revealed in section M as well. However, care should be taken to avoid the impression of a mathematical evaluation devoid of judgment. The weights are intended to be used by the SSO as a guideline.

(2) If all evaluation factors are considered by the SEB to be of approximately equal importance, a statement to that effect shall be included in the RFP. However, if there is a difference in the level of importance among the factors, then a statement shall be included in the RFP to advise the offerors of the relative importance of the factors. In this regard, one example of a statement that might be appropriate, depending on the nature of the requirements, type of contract, and objectives of the acquisition, is as follows:

"Of the four evaluation factors identified above, Mission Suitability and Cost are most important, and, as related to each other, are approximately equal in importance. The Relevant Experience and Past Performance factor is of somewhat less importance than either Mission Suitability or Cost, and the Other Considerations factor is of considerably less importance than Relevant Experience and Past Performance.

The subfactors to be used in evaluating Mission Suitability and their corresponding weights are listed below in descending order of importance:

Understanding of the Requirement (40 percent)

Excellence of Proposed Design (30 percent)

Management Plan (15 percent)

Key Personnel (10 percent)

Corporate or Company Resources (5 percent)

The numerical weights assigned to the five subfactors identified above are indicative of the relative importance of those evaluation areas. The weights will be utilized only as a guide."

302 Cost

1. Before issuing a solicitation, the contracting officer and technical personnel shall (when it is feasible to do so) develop a Government cost estimate for the planned acquisition. Estimates can range from simple budgetary estimates to complex estimates based on inspection of the product itself and review of such items as drawings, specifications, and prior data. The SEB is tasked with the responsibility to ensure that the Government cost estimate properly reflects the effort to which the RFP applies.

2. In the Cost factor evaluation, the SEB shall analyze the proposed costs or prices of all offerors. The SEB may use any and all tools available in performing these analyses including information in the Armed Services Pricing Manual (ASPM). However, the required depth of the analysis is subject to the criteria in FAR 15.804. The SEB shall advise the SSO concerning—

a. The costs or prices as proposed by all offerors, including those not within the competitive range;

b. The comparison of costs proposed by all offerors, with the independent Government cost estimate, when feasible;

c. The realism of costs proposed by all offerors determined to be within the competitive range. Cost realism is a review of the proposal to determine if the overall costs proposed are realistic for the work to be performed, if the costs reflect an offeror's understanding of the requirements, and if the costs are consistent with the various elements of the technical proposal. This type of analysis will be used in the Cost area and Mission Suitability or other technical areas;

d. The probable cost to the Government of, at a minimum, each proposal within the competitive range. If it appears to the SEB that any offeror's approach(es) or plan(s) for accomplishing the proposed work will require modification in order to be acceptable to the Government, the SEB shall identify and assess the modification required, determine the probable cost of such modification, and include that probable cost assessment in its report to the SSO;

e. The differences in business methods, operating procedures, and practices as they impact cost; and

f. Its level of confidence in the probable cost assessments as they pertain to each fully evaluated proposal.

3. The probable cost should reflect the SEB's best estimate of the cost of any contract which might result from that offeror's proposal, including any recommended additions or reductions in personnel, equipment, or materials. To the extent that the recommended additions or reductions reflect a lack of understanding of the requirements of the RFP, that lack of understanding should be reflected in the scoring of the Mission Suitability factor, subfactors, and elements.

4. A well-defined statement of work reflecting clear, concise work breakdown structures is of great value in obtaining well-structured proposals and in allowing the SEB to understand and assess proposed costs.

5. All cost categories and amounts present in an offeror's cost proposal (including options) are to be analyzed by the SEB and reported to the SSO. In the event SEB members have different opinions as to the cost analyses and assessments of probable costs, these differing opinions should be reported to the SSO to aid in forming an opinion regarding the confidence to be attributed to the analyses and assessments.

303 *Relevant Experience and Past Performance*

1. This factor has been established to give relevant experience and past performance proper emphasis in the evaluation and selection process. Assessments to be made regarding relevant experience and past performance, particularly past performance, may be extremely difficult. In more straightforward cases, this assessment may be based upon well-documented and highly reliable evidence portraying favorable or unfavorable experience and past performance. More often, these assessments will be made from data presenting a less-than-optimum degree of well-documented evidence of a company's experience and past performance. The problem for the SEB will be establishing an acceptable degree of confidence that the data sources are providing an impartial, fair, and accurate representation of relevant experience and past performance. The SEB must be extremely careful in making the judgments and conclusions required under this factor but must not hesitate to assess relevant experience and past performance, positively or negatively, when the information received would reasonably support such an assessment.

2. This factor addresses evaluation of overall relevant experience and past performance for the company, not the experience and past performance of individuals involved with contract performance; the latter are to be evaluated under key personnel within the Mission Suitability factor.

3. Relevant experience reflects the accomplishment of work by an offeror that is comparable to or related to the work or effort required under the instant procurement. Programs or projects of comparable magnitude that include technical, cost, schedule, and management constraints similar to those expected to be encountered in the instant procurement are clearly relevant.

4. Past performance is especially important; how well the offeror performed on similar work may be a significant indicator of performance on the job at hand. Many organizations exhibit characteristics that persist over time—for example, the ability to move projects out of the research environment and to translate research findings into practical, results-oriented hardware; difficulty in transitioning conceptual efforts into soundly engineered "hardcopy" plans which can be produced economically; resiliency in the face of trouble; resourcefulness; management determination that the organization live up to its commitments; and skill in development of key people. It is essential to develop such an indicator independent of the offeror's proposal. It is the responsibility of the SEB to collect and document information on the past performance of, at a minimum, all offerors within the competitive range. The SEB should personally contact program or project managers within NASA or other Government agencies in a position to have responsibly observed performance of the offerors as either a prime or major subcontractor and obtain their views concerning the quality of the work the offeror did (or is doing) on comparable jobs. In the event a substantially unfavorable response is received which, in the opinion of the SEB will be of special significance to the SSO, the offeror in question will be provided an opportunity during written and/or oral discussions (see chapter 4) to clarify that response.

5. The SEB is responsible for collecting and developing relevant experience and past performance information, identifying the source, and presenting it to the SSO. While the clearly relevant experience or past performance is of prime importance, other experience or past performance determined by the SEB to be significant or to be indicative of company experience or past performance should be noted and brought to the attention of the SSO. All pertinent information

including project manager assessments and offeror responses, will be:

(a) Made part of the SEB's records,

(b) Contained in the SEB report, and

(c) Presented to the SSO.

6. The Relevant Experience and Past Performance factor is not numerically scored but is assigned an adjectival rating by the SEB.

7. This factor may be a significant consideration in the selection process. Therefore, the basis of the evaluation must be thoroughly identified and well documented. While objectivity is desirable, reasonable judgments often have to be made in the evaluation process. Subjectivity is not improper; an SEB should not hesitate to make reasonable subjective evaluations of relevant experience and past performance based upon as much factual data and experiential information as can be reasonably accumulated.

304 Other Considerations

1. This factor includes all considerations other than Mission Suitability, Cost, and Relevant Experience and Past Performance that the SSO will consider in making a final selection. Only Other Considerations specifically identified in the RFP shall be considered by the SSO in making a decision.

2. Following is a listing of Other Considerations that may be appropriate to include in an RFP. Not all of the subfactors listed are necessarily applicable to all procurements; nor is the listing intended to be all inclusive or restrictive:

a. Financial condition and capability.

b. Corporate priority on the work being proposed, or importance of the business to corporate management.

c. Labor-management relations.

d. Extent of proposed small and small disadvantaged business, and women-owned small business enterprise participation in subcontracting arrangements.

e. Geographic distribution of the work to be performed.

f. Acceptance of contract terms and conditions set forth in the RFP.

g. Quality and productivity improvement plan.

h. Any other subfactors pertinent to the particular procurement and identified under the Other Considerations factor within the RFP.

3. Other Considerations shall be defined specifically in the RFP, evaluated by the SEB, and reported to the SSO. Certain subfactors under the Other Considerations factor, such as financial condition and capability, may undergo change up to the moment of source selection.

4. Information regarding some of the Other Considerations is generally available to an SEB in the form of preaward surveys, NASA inspection reports, facility capability reports, purchasing system surveys, audit reports, and equal employment opportunity surveys. The SEB should make every reasonable effort to identify and use timely existing reports before initiating original inquiries. While written reports such as those mentioned in this paragraph may be significant, they should not be exclusively relied upon by the SEB. In addition, personal inquiries should be directed to Government managers likely to be knowledgeable about the offeror's record in these areas.

305 Continuing Evaluative Responsibility of SEB

Even after the SEB has made its formal report to the SSO, the SEB shall have continuing responsibility to report to the SSO, until its discharge, any circumstances that would change the SEB's evaluation findings relative to any evaluation factor (Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations) for any offeror. It is not intended that, after its report, the SEB actively pursue continuing evaluation. What is expected is that matters related to any of the evaluation factors which come to the attention of the SEB, and which might be expected to be pertinent to the selection decision, will be communicated to the SSO.

CHAPTER 4—SEB OPERATING PROCEDURES FOR SOLICITATION AND EVALUATION

400 General

This chapter describes procedural steps in preparing the SEB for its work and outlines SEB activities for solicitation and evaluation of proposals.

401 Initial SEB Activities

1. Official SEB activities commence upon receipt by the Chairperson of the letter establishing the SEB and designating its members which should be no later than approval of the procurement plan. However, prior to official establishment of the SEB, the proposed SEB Chairperson and members may hold meetings to accomplish such tasks as SEB member orientation to proposed operational procedures, security measures that will be utilized, and preliminary review of the proposed RFP.

2. Once the SEB is established, the SEB Chairperson shall ensure that—

a. A management and staffing plan is prepared, indicating necessary personnel and other resource requirements, including a time schedule for SEB actions and events leading to presentation of findings to the SSO;

b. Each SEB voting member is furnished appropriate information regarding the nature of the procurement in addition to a copy of their designation letter, approved procurement plan, and the projected time schedule;

c. Each SEB participant, voting and nonvoting, is cautioned concerning restrictions on disclosure of information during the SEB process, avoidance of conflicts of interest, and conformity with the NASA Standards of Conduct. Each SEB participant, voting and nonvoting, shall file a NASA Form 1270, "Confidential Statement of Employment and Financial Interests," in accordance with NHB 1900.1, "Standards of Conduct for NASA Employees." In addition, each SEB participant shall sign an appropriate nondisclosure statement (a sample nondisclosure statement is included in Appendix B). These documents shall be reviewed by the Associate General Counsel for General Law or designee for Headquarters employees or by the cognizant Field Installation Chief Counsel or designee for field installation employees.

d. Letters are issued to all personnel involved in the SEB's activities advising them of pertinent restrictions and prohibitions, including a caution not to discuss any aspect of the procurement with anyone not having a need-to-know. The right to information on a need-to-know basis does not extend to the normal chain of supervision of any member of the SEB or to any individual having technical responsibility for the effort being evaluated except as specifically approved by the SEB Chairperson on a case-by-case basis. Those individuals will also be notified by the SEB Chairperson, in writing, of the privileged character of proposal information;

e. The list of sources to be solicited is developed and approved by the SEB with the assistance of the cognizant procurement and program or project offices;

f. Whenever it is expected to be beneficial, a draft RFP or Statement of Work is issued to prospective offerors for comment;

g. Prior to RFP issuance, the substance and the weight of evaluation factors, subfactors, and elements, as well as the substance of any applicable qualification standards, are presented to the SSO or designee for approval;

h. The RFP is reviewed and approved by the SEB prior to issuance;

i. During the competitive phase of the procurement, every effort must be made to assure fair and equitable treatment of all offerors (both prospective and actual). Upon release of the formal RFP, the Chairperson shall impose a communication blackout, in writing, by directing all personnel associated with the procurement to refrain from communicating with prospective offerors, formally or informally, regarding any aspects of the procurement. All inquiries regarding the procurement shall be referred to the contracting officer; and

j. Prior to receipt of proposals, the evaluation plan is reviewed and approved by the SEB and cognizant management personnel. The evaluation plan, once approved, must be impartially applied by the SEB to each proposal.

402 Evaluation Plan

1. The SEB evaluation plan consists of general and specific evaluation guidelines (and qualification standards, where applicable) established to assess each offeror's proposal relative to the evaluation factors, subfactors, and elements set forth in the RFP. The evaluation guidelines are designed to focus the evaluators' assessment. They are not weighted and are not listed in the RFP. However, the substance of the guidelines may be included in a narrative description of the subfactors and elements. In addition, the plan includes the system used in conducting the evaluation and scoring each offeror's proposal.

2. The SEB determines what evaluation factors, subfactors, and elements to assign to the various committees and panels. While it is necessary to give committees and panels all information required to conduct an evaluation of their assigned area, it is not appropriate to disclose to them the specific scoring system used by the SEB in scoring proposals.

3. The detailed SEB evaluation plan to be used by the SEB, committees, and panels should be approved before the RFP is issued but, in any case, shall be approved before proposals are evaluated.

403 Qualification Standards

1. It is NASA policy to offer the opportunity to compete for its procurements as broadly as is consistent with the nature of each particular procurement. However, in view of the distinctive characteristics of NASA programs, those potential offerors that do not possess the minimum qualifications and resources necessary to perform the proposed work of a given procurement should not be encouraged to incur proposal and other expenses involved in competitive submissions.

2. To accomplish this objective without limiting meaningful competition requires early and intense effort on the part of the SEB, working in conjunction with the program and procurement staff most familiar with the procurement requirements.

3. When the nature of the procurement requires, qualification standards may be established in accordance with FAR 9.104-2. These will consist of special experience, capability, or specialized facilities critical to program performance aspects of the procurement.

4. In establishing qualification standards, care must be exercised to restrict them to those essential to the successful completion of the contract work. Qualification standards may be employed only where it is possible for the SEB to establish standards which are justified by the nature of the particular procurement. These standards must be applied equally to all potential sources.

5. When developed by the SEB and approved by the SSO or designee, qualification standards shall be clearly set forth in the RFP and included in the Commerce Business Daily synopsis.

6. Approved qualification standards will be used by the SEB to screen proposed source list(s) so that only firms possessing those unique specialized facilities, capability, or experience deemed critical to program performance aspects of the procurement will be solicited. Notwithstanding the considerations that lead to the elimination of sources from solicitation, any firm may submit a proposal. These same qualification standards will be used to consider all sources who may submit a proposal. This assures that the presolicitation consideration of prospective contractor qualification standards does not act to restrict competition, but only to discourage costly proposal submissions from potential offerors to whom award would not appear likely and that all offerors shall have an equal opportunity to compete. If an offeror fails to meet the stated qualification standards, the proposal shall be rejected, not considered further in the evaluation, and the offeror informed of the basis of rejection.

404 *Request for Proposals (RFP's)—Review and Approval*

1. Effectiveness of the evaluation is dependent, in large measure, on how well the work to be performed and the basic ground rules under which the competition will be conducted are described in the RFP. Accordngly, the RFP shall be reviewed by the SEB and approved by appropriate levels of management prior to issuance to ensure its cceptability.

2. In reviewing the RFP, the SEB and apropriate management shall ensure that the ollowing matters pertinent to source evalation and selection are fully covered in the olicitation:

a. Any qualification standards shall be dentified and described.

b. Evaluation factors shall be described, ncluding a general narrative explanation of heir relative importance.

c. The Mission Suitability factor shall be escribed. Evaluation subfactors shall be dentified and described, including their nuerical weights. If deemed conducive to the aluation process, elements of a subfactor hall be identified and described, including heir numerical weights.

d. The Cost factor shall be described.

(1) When uncertainties involved in contract requirements necessitate the use of a cost-type contract, offerors may be motivated to perform within the proposed cost estimate through the inclusion of appropriate cost incentive arrangements.

(2) Negotiated indirect cost rate ceilings shall be used only in accordance with FAR 42.707.

e. The Relevant Experience and Past Performance factor shall be described. The identification data and contact or customer references required by NFS 1815.406-70(b)(6) for the conduct of this evaluation shall be stated. Offerors should be cautioned that omissions or an inaccurate or inadequate response to this evaluation category could have a negative effect on overall evaluation. Offerors should also be advised that, in addition to information they provide, the SEB will consider all information available to NASA regarding the offeror's relevant experience and past performance.

f. The Other Considerations factor shall be described.

g. The method of evaluation shall be explained clearly, but concisely, so that prospective offerors understand the SEB's use and treatment of the factors, subfactors, and elements.

h. When cost proposals are permitted to be submitted after technical proposals, a notice shall be included in the RFP stating the required date for each submission.

i. When applicable, a notice that a preproposal conference is to be held shall be included, stating its purpose, time, place, and scope.

j. The Statement of Work shall describe as clearly and concisely as possible the product or service to be procured. It shall be structured to identify the important areas of emphasis. There must be no inconsistencies between it and the evaluation factors, subfactors, and elements to be used by the SEB and the SSO. Nonessential or unduly restrictive requirements shall be eliminated.

k. Requirements for reports and data essential to contract evaluation and performance shall be clearly described, including a cross reference to the Statement of Work and a schedule for submission.

l. When the procurement involves a major system under NMI 7100.14, the SEB will ensure that the RFP is prepared in terms of mission need so each offeror can respond with an alternative system design concept proposal to satisfy the mission need and can propose a technical approach, design features, and alternatives to schedule, cost, and capability goals consistent with that concept. In order to remove inhibitions to innovative solutions and to improve the approach to achieving program objectives, consideration should be given to conducting orientation briefings for prospective offerors and, where appropriate, solicit comments on a draft of the solicitation.

m. Any limitations on pages and the number of copies of offerors' initial proposals shall be included. When imposing a firm page limitation, the solicitation must clearly state that the evaluators will read only up to the maximum number of pages specified. Pages in excess of the maximum are to be removed from the proposal and not evaluated, but retained as a part of the official contract file. Guidance on the number of pages preferred in offerors' proposals may be used in lieu of a firm page limitation.

3. The SSO may request a detailed review of the RFP beyond that of the SEB and cognizant management personnel or may, more specifically, request a detailed review of the Statement of Work, qualification standards, evaluation factors, subfactors, elements, or other areas pertinent to proposal preparation, evaluation, and source selection. Specific reviewing officials or offices may be designated for this purpose.

4. The RFP shall comply with all current regulations and directives applicable to NASA solicitations; particular emphasis is placed on the requirements of FAR 15.406 and NFS 1815.406.

5. When detailed program or project support plans will be required as part of the offeror's proposal but are not considered important discriminators in the evaluation process, the requirements for these plans shall be described in separate appendices to the Statement of Work in accordance with NFS 1815.406-70(a)(7).

6. When, either before or after receipt of proposals, the Government modifies its requirements, the contracting officer is required to issue a written amendment to the RFP in accordance with FAR 15.606.

405 Preproposal Conference

1. A preproposal conference to brief prospective offerors may be conducted after a solicitation has been issued but before proposals are received, in accordance with FAR 15.409. The contracting officer, in conjunction with the SEB, shall make a determination, prior to issuance of the RFP, as to whether a preproposal conference is required. Generally, these conferences benefit both the Government and prospective offerors in complex acquisitions where it is necessary to explain or clarify complicated specifications and requirements.

2. The conference shall be scheduled to permit prospective offerors sufficient time after the issuance of the RFP to become familiar with the RFP requirements yet not too late to allow meaningful use of the information obtained at the conference.

3. The conference should include a presentation of the significant aspects of the procurement followed by a question and answer session. A record of all information provided at the conference, together with a copy of all questions and answers, shall be provided to all prospective offerors by formal written amendment to the solicitation. If it becomes apparent at the conference that the RFP needs revision, the revised requirements must be included in a written amendment.

406 Initial Evaluation

1. Upon receipt of proposals, the contracting officer shall mark each proposal with the date and time of receipt and forward all proposals to the SEB Chairperson or the SEB Recorder for control and safeguarding throughout the evaluation process.

2. Late proposals or modifications shall be handled in accordance with FAR 15.412.

3. Procedure for Evaluation of a Single Proposal—

a. If only one proposal is received in response to the solicitation, the contracting officer shall examine the situation to ascertain the reasons for the single response. The contracting officer shall include a written notation in the contract file describing the circumstances surrounding the receipt of a single proposal as well as a determination whether or not the solicitation was or was not flawed or unduly restrictive, prior to releasing the proposal to the SEB for evaluation.

b. The SEB shall complete a limited preliminary evaluation to determine that the single proposal submitted satisfies stated qualification standards, if any, and is otherwise an acceptable proposal (see subparagraph 406.5). Upon completion of this limited preliminary evaluation, a letter shall be forwarded to the SSO presenting a summary of the evaluation results.

c. The SSO shall as a result of reviewing the SEB summary, and the contracting officer's examination of the facts and determination, notify the SEB Chairperson that either—

(1) The SEB is instructed to proceed with preestablished SEB procedures, including complete initial evaluation, oral and written discussions, request and receipt of a Best and Final Offer (BAFO), and final evaluation, culminating in a formal presentation to the SSO for approval to enter into negotiations;

(2) The contracting officer is instructed to immediately enter into negotiations resulting in a complete contract document, signed by the offeror, to be signed by the contracting officer upon approval by the SSO. Upon completion of the negotiations the SEB shall present the results to the SSO for approval; or

(3) The SEB Chairperson is granted full delegation of authority to disband the SEB and to instruct the contracting officer to

conduct negotiations for contract award without further SSO involvement.

(4) The contracting officer is instructed to reject the single proposal received and to cancel the solicitation.

d. These procedures are likewise applicable when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received as defined by subparagraph 406.5 of this handbook.

4. Committee Evaluations—

a. The initial phase of evaluation generally will involve established committees. As promptly as possible, committees are to be convened. The SEB Chairperson shall transmit to the committees proposals or portions of proposals to be evaluated, instructions regarding the expected function of each committee, and all data considered necessary or helpful. The committee chairperson is responsible for instructing the members as to committee functions, responsibilities, and procedures.

b. While oral reports may be given to the SEB, the committee function requires the submission of a written report which should include—

(1) Copies of individual worksheets and supporting comments to the lowest level evaluated;

(2) An evaluation sheet summarized for the committee as a whole; and

(3) A statement for each proposal describing any strengths or weaknesses which significantly affected the evaluation and stating any reservations or concerns, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

c. It is imperative that the SEB provide clear traceability throughout the evaluation process. This traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records but need not necessarily be included as part of the SEB report to the SSO. A committee report should be included with necessary to the SSO's understanding of the SEB's action.

d. Each voting SEB member shall thoroughly review each proposal. Committee reports and findings shall be reviewed by the SEB. The SEB is to consider the committee evaluation, take into account any reservations or concerns stated by the SEB members and the committee, and rate or score the proposals for each evaluation factor, subfactor, and element according to its own collective judgment. SEB minutes shall reflect this evaluation process which shall be consistent with the approved evaluation plan.

5. Identification of Unacceptable Proposals—

a. The SEB may discontinue the evaluation of any proposal which is unacceptable because—

(1) It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements of the RFP;

(2) In research and development procurement, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

b. Simple technical nonresponsiveness in the sense in which the term is used in sealed bidding is not alone sufficient to constitute unacceptability if the proposal is otherwise competitive and written and/or oral discussions, or negotiations after selection, reasonably offer the likelihood of resolution. When there is doubt as to whether a proposal should be rejected initially as unacceptable, that doubt shall be resolved by including it for further consideration.

c. The SEB must document its judgment that the deficiencies of any proposal are sufficiently significant to warrant discontinuing evaluation of the proposal at this point in the process.

6. SEB Findings—

a. Preparing the results of the initial evaluation in a narrative SEB report is an important aspect of the evaluation process. The SEB should be aware that the SEB report and presentation provide the principal tools available to the SSO to perform a comparative analysis in making a source selection decision. Guidelines for the report and presentation are set forth in Chapter 5 and Appendix C. For each proposal, the SEB should indicate in the narrative whether the proposal meets or fails to meet any of the requirements of the RFP; all strengths and weaknesses of the proposal and whether they are correctable; the proposed and probable cost (normally required only for those offeror(s) in the competitive range or those offeror(s) eliminated from competitive range on the basis of cost); the technical, schedule, and cost risk associated with the proposal; and the adjectival rating of the Relevant Experience and Past Performance and Other Considerations evaluation factors. Strengths and weaknesses must be further defined in the SEB report as major or minor to provide a valuable summary of discriminators among proposals in addition to supporting the adjectival ratings assigned to each Mission Suitability subfactor and element by the SEB, and for the Mission Suitability factor as a whole. In addition to the narrative report of evaluation findings, the SEB will apply the Mission Suitability scoring system detailed in the evaluation plan to rate each proposal in relation to the Mission Suitability evaluation subfactors and elements.

b. In structuring an applicable rating system, the following adjective ratings, definitions, and percentile ranges shall be used for the evaluation of Mission Suitability subfactors, and, if individually weighted and scored, elements. (The total proposal should also be classified with an appropriate adjectival rating for Mission Suitability.)

	Percentile range
Excellent—A comprehensive and thorough proposal of exceptional merit with one or more major strengths. No weaknesses or only minor correctable weaknesses exist	91-100
Very Good—A proposal which demonstrates overall competence. One or more major strengths have been found, and strengths out balance any weaknesses that exist. Any major weaknesses are correctable	71-90
Good—A proposal which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses, not offset by strengths, do not significantly detract from the offeror's response. Major weaknesses are probably correctable	51-70
Fair—A proposal that has one or more weaknesses. Weaknesses have been found that outbalance any strengths that exist. Major weaknesses can probably be improved, minimized, or corrected	31-50
Poor—A proposal that has one or more major weaknesses which are expected to be difficult to correct, or are not correctable	0-30

c. Normally, proposals are to be rated using adjectival ratings on two occasions as follows:

(1) Upon completion of the initial evaluation of proposals, and

(2) Upon completion of the final evaluation of the BAFO's.

Both ratings will be maintained by the SEB, included in the SEB report, and presented to the SSO. There shall be clear traceability of any scoring changes between initial and best and final proposals.

7. Determination of Competitive Range—

a. Subsequent to the initial identification of proposals considered unacceptable, the SEB will compile initial evaluation findings of all remaining acceptable proposals, sufficient for determination of the competitive range in accordance with FAR 15.609 and NFS 1815.613-71(b)(4). The competitive range shall be determined by the SEB together with the contracting officer on the basis of Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award. Competitive range determinations are final unless the SSO determines otherwise.

b. The objective of a competitive range determination is not to eliminate proposals but to facilitate competition by conducting written and/or oral discussions with only those offerors who have a reasonable chance of being selected for award. Where there is doubt as to whether a proposal is or is not within the competitive range, the proposal should be included within the competitive range. The determination of competitive range is a complex determination based on informed judgment. All competitive range decisions shall be completely and adequately documented in the contract file in accordance with NFS 1815.613-71(b)(4).

8. Notification of Unsuccessful Offerors. The contracting officer shall notify each unsuccessful offeror in accordance with FAR 15.1001(b) at the earliest practicable time, in writing, that its proposal is no longer to be considered for contract award.

407 Final Evaluation

1. Evaluation of Plant and Facilities

a. Inspections at the plants of competing offerors could provide valuable insight into the SEB's evaluation of proposals. For instance, in procurements where significant experimental, research, developmental, testing, fabrication, or other work is to be performed (the quality of which may be affected by a contractor's plant or facilities), a complete evaluation may require an on-site visit by the SEB. For other procurements, e.g., support services contracts, plant inspections may serve no useful purpose.

b. When plant inspections are conducted, the visiting team shall include SEB members and any qualified experts required by the SEB. At least one SEB member shall be the same on all team visits to provide continuity and a basis for comparison. Visits are to be conducted, generally, after the SEB's initial evaluation has been completed and for a specific, clearly understood purpose. Visits shall be conducted only with the approval of the SEB Chairperson, who will ensure that all visits are made on an impartial basis. All personnel must remember that only the contracting officer can commit NASA and that they must avoid any contact with an offeror that is not essential or which could raise questions of impropriety. A visit to all offerors within the competitive range is advisable if plant inspections are being conducted.

c. Some potential benefits of plant visits are—

(1) Reviewing with resident Government personnel relevant experience and past performance;

(2) Reviewing the degree of capability and interest of the offeror to undertake the project in light of other work planned or in process; and

(3) Examining such matters as—

(a) Plant capacities;

(b) Management and technical capability of personnel;

(c) Availability of existing facilities, both Government-owned and contractor-owned;

(d) Adequacy of accounting practices and cost controls;

(e) Adequacy of estimating systems; and

(f) Ability to forecast and meet program schedules.

2. Written and/or Oral Discussions

a. Except as provided in FAR 15.610(a), the contracting officer shall conduct written and/or oral discussions with all responsible offerors in the competitive range. If, however, a decision is made in accordance with FAR 15.610(a)(3) to award without conducting written and/or oral discussions upon the completion of the initial evaluation, the SEB Chairperson shall forward a letter to the SSO for approval presenting a summary of the evaluation results. Upon SSO approval, the contracting officer shall undertake to complete all actions necessary to award the contract, without discussions or negotiations, to the offeror submitting the lowest overall cost proposal.

b. Written and/or oral discussions shall be conducted in accordance with FAR 15.610 (with the exception of FAR 15.610(c)(2)) and NFS 1815.613-71(b)(5). Preparation for written and/or oral discussions should include, but not be limited to, the establishment of the following:

(1) The time(s) and place(s) for conducting discussions. This requires establishment of the order of discussions with offerors. When feasible, the order should be established alphabetically or by lot. When discussions are to be at offeror's plants or offices it may be that geographic dispersion will be the deciding factor. The objective is impartiality.

(2) Topics for discussion. This will include preparation and issuance of written questions common to all offerors, as well as those that are peculiar to individual offerors, allowing adequate time for development of responses by offerors.

(3) The Government team that will conduct the discussions. The contracting officer, in concert with the SEB Chairperson, will designate appropriate procurement, pricing, and technical personnel for the Government team in addition to identifying the individuals specified in the offeror's proposal requested to be present for the discussions.

c. The contracting officer, in concert with or on behalf of the SEB, will conduct written and/or oral discussions of the effort to be accomplished and the cost or price of the effort with all offerors determined to be within the competitive range. The discussions are intended to assist the SEB—

(1) In understanding fully each offeror's proposal and its strengths and weaknesses based upon the individual efforts of each offeror;

(2) In assuring that the intent and the points of emphasis of RFP provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government;

(3) In evaluating the personnel proposed by each offeror; and

(4) In presenting a report to the SSO that makes the discriminators identified among proposals clear and visible.

d. In cost-reimbursement type contracts and all research and development contracts, the contracting officer shall point out instances where the meaning of some aspect of a proposal is not clear and instances in which some aspects of the proposal failed to include substantiation for a proposed approach, solution, or cost estimate. However, where the meaning of a proposal is clear and the SEB has sufficient information to assess its validity and the proposal contains a weakness that is inherent in an offeror's management, engineering, or scientific judgment or which is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weaknesses. The possibility that such discussions may lead an offeror to discover that it has a weakness is not a reason for failing to inquire into a matter where the meaning is not clear or where insufficient information is available, since understanding of the meaning and validity of the proposed approaches, solutions, and cost estimates is essential to a sound selection. Offerors should not be informed of the relative strengths or weaknesses of their proposals in relation to those of other offerors. To do so would be contrary to regulations which prohibit the use of auction techniques (see FAR 15.610(d)(3)). In the course of discussions, Government participants should be careful not to transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas.

e. In fixed-price type contracts other than for research and development, the specifications ordinarily describe the Government's requirements with more particularity than is possible in cost reimbursement or research and development contracting, so that less emphasis is placed on an offeror's introduction of scientific, engineering, and management innovations. The contracting officer, in written and/or oral discussions, shall point out instances in which some aspect of a proposal contains a weakness in relation to the Government's requirements. However, the contracting officer shall neither point out the relative strengths or weaknesses of a proposal in relation to those of other offerors nor transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas. The contracting officer shall point out price elements that do not appear to be justified and shall encourage offerors to put forward their most favorable price proposals, but shall not discuss, disclose, or compare price elements of any other offeror.

f. Although unusual, if the SEB and the contracting officer, after conducting written and/or oral discussions, determine that a proposal no longer has a reasonable chance of being selected for contract award, the proposal can be eliminated from the competitive range in accordance with FAR 15.609(b). The contracting officer shall notify the unsuccessful offeror in writing that its proposal is no longer eligible for award.

g. If, after conclusion of written and/or oral discussions, the SEB considers that the evaluation findings thus far completed are not sufficiently comprehensive for the SSO to make a decision, it may be prudent and necessary to conduct further discussions or final negotiations with those offerors remaining in the competitive range prior to presentation of the findings to the SSO. This course of action must be considered as an exception to the SEB process and therefore may be accomplished only with the approval of the Assistant Administrator for Procurement.

3. Best and Final Offers (BAFO's)

a. The contracting officer will issue to all offerors still within the competitive range a request for Best and Final Offers (BAFO's) in accordance with FAR 15.611. Oral requests for BAFO's shall be confirmed in writing.

b. A common cutoff date and time that allows each offeror a reasonable opportunity to support and clarify its proposal through submission of a written BAFO shall be established. An offeror may, on its own initiative, revise its proposal and make corrections or improvements until the established cutoff date.

c. Offerors should be cautioned to provide supporting documentation for any changes to their prior offers. Any revision received after the established common cutoff date must be considered late in accordance with FAR 15.412.

d. The cutoff date must be such as to permit adequate time for all offerors to submit revised proposals; particular care must be taken to ensure that there is no compression of time for the offeror with whom discussions were last held, i.e., if 2 weeks is adequate time for submission, then the time allowed should be 2 weeks from the date of last discussions.

4. Evaluation Findings

a. After consideration of all committee reports, information received from offerors through plant visits, written and/or oral discussions, and BAFO's, the SEB shall conduct a final evaluation of proposals.

b. The final evaluation must build on the SEB's earlier recorded findings. The purpose of the final evaluation is to determine the effects, if any, of discussions and BAFO's on the SEB's earlier Mission Suitability scores and adjectival ratings as well as on the initial evaluation of Cost, Relevant Experience and Past Performance, and Other Considerations. Therefore, a clear and logical audit trail shall be maintained for the rationale for changes in ratings and scores, including a detailed account of the SEB decisions leading to the final ratings and scores.

c. The final evaluation must represent the collective judgment of the SEB regarding its assessment of the offerors for each factor evaluated including its assessment of the Mission Suitability subfactors, elements, if any, and its associated ratings, scores, and findings. The adjectival ratings and numerical scores shall reflect the strengths, weaknesses, and discriminators the SEB finds in the proposals. In this way, the reasons for differences in adjectival ratings, numerical scores, and findings can readily be explained to and understood by the SSO.

d. All significant SEB evaluation findings shall be fully documented and incorporated into a written report which will serve as the basis for the selection decision by the SSO.

CHAPTER 5—SOURCE EVALUATION BOARD REPORT AND PRESENTATION

500 General

This chapter describes the requirements for the written report and oral presentation to the SSO.

501 Responsibilities and Procedures

1. The SEB shall prepare a written report of its findings, signed by the Chairperson and all voting members of the SEB. It shall present its written report and make an accompanying oral presentation to the SSO. Guidelines for the written report and the oral presentation are set forth in Appendix C.

2. SEB Preliminary Presentation (Dry Run)

a. When the Administrator is the SSO, a preliminary presentation should be made to the Field Installation Director and to the Official-in-Charge of the cognizant Headquarters Program Office. When the Official-in-Charge of the cognizant Headquarters Program Office is the SSO, a preliminary presentation should be made to the Field Installation Director and the cognizant Headquarters Deputy Program/Staff Associate Administrator or the official responsible for the specific project. The dry run presentation is the same presentation prepared for the SSO. Attendance at the dry run shall be restricted to those personnel who are involved in the selection process or who have a valid need-to-know. For Headquarters dry runs, an attendance list will be issued by the SEB coordinator in the Office of Procurement (Code HS). Admittance to the dry run will be restricted to those individuals whose names appear on the attendance list. However changes proposed 24 hours before the presentation will be considered. Persons not on the list will not be admitted without the prior authorization of the SEB coordinator. For field installation dry runs, the attendance list will be prepared by a designee of the Procurement Officer.

b. The following personnel or designees should attend the Headquarters dry run presentation:

(1) Cognizant program/staff officials.

(2) Official-in-Charge of the cognizant Headquarters Program Office in those cases when the Administrator serves as the SSO.

(3) NASA Comptroller.

(4) Assistant Administrator for Procurement and/or Deputy Assistant Administrator for Procurement.

(5) General Counsel and/or Associate General Counsel (Contracts).

(6) Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance, when SRM&QA matters are involved.

(7) Field Installation Director.

(8) Field Installation Chief Counsel.

(9) Selected voting and nonvoting ex officio SEB members (no designees).

(10) Field Installation Procurement Officer.

(11) Headquarters procurement personnel responsible for support to the Headquarters cognizant Program/Staff Office.

(12) Other personnel as approved by the Official-in-Charge of the cognizant Headquarters Program Office and the Office of Procurement (Code HS).

c. The SEB Chairperson or designee is responsible for arranging and coordinating the SEB dry run with the SEB coordinator. The SEB dry run should take place far enough in advance of the presentation to the SSO to allow for changes or revisions to the presentation material, if necessary. The material used during the dry run presentation is considered to be "SEB Sensitive" and should be treated accordingly. Consequently, the SEB Chairperson is responsible for providing a projectionist, who has been SEB cleared, to present the material for both presentations.

d. The dry run presentation, as well as the presentation to the SSO, will ordinarily be made by the SEB Chairperson; however, if another official has been designated to make the final presentation to the SSO, that person shall also make the dry run presentation. The SEB presentation material shall be delivered to the SEB coordinator for control and distribution no later than 7 working days before the scheduled dry run presentation date. The SEB presentation material includes 10 copies of the SEB report and charts.

3. SEB Formal Presentation

a. The SEB shall present its evaluation findings to the SSO as the basis for a sound selection decision. This formal presentation should be attended by the same personnel or designees in attendance at the dry run, with the exception of the inclusion of the SSO at the formal presentation. Continuity of attendees assures a more efficient formal presentation in addition to limiting access to SEB sensitive data.

b. The cognizant procurement analyst in the Procurement Operations Division (Code HS) will function as the SEB coordinator and will perform coordination functions for the formal presentation when the Administrator or the Official-in-Charge of the cognizant Headquarters Program Office serves as the SSO. These functions include arranging the time and place of the presentation; assuring, with the concurrence of the appropriate personnel in the Office of the Administrator, proper attendance; and distributing SEB reports and graphic material.

4. The designated individuals to whom the SEB presentation(s) (dry run and final) are made will be responsible for ensuring that—

a. The requirements of this handbook and all applicable agency policies have been complied with in the solicitation and evaluation processes;

b. The written report and presentation accurately convey SEB activities and findings;

c. The oral presentation is arranged and conducted in a professional manner; it is complete and informative; and it can be concisely presented within the time allocated by the SSO; and

d. No changes (1) to established evaluation factors, subfactors, elements, weights, or scoring systems or (2) in the substance of the SEB's findings shall be made. They may, however, direct the SEB to reconvene to rectify procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the organization of the written report and/or the method of presentation.

5. All copies of the SEB reports and presentation material contain sensitive business information in addition to "SEB Sensitive" data and shall be adequately safeguarded throughout the source selection process. Physical safeguarding of sensitive data includes, but is not limited to—

a. Controlling the number of copies of proposals and SEB reports;

b. Restricting access to SEB work areas;

c. Securing SEB material under locked conditions or in vaults;

d. Minimizing SEB presentations other than the dry run and formal presentations; and

e. Limiting attendees at SEB presentations.

CHAPTER 6—SOURCE SELECTION

600 General

This chapter provides guidelines relating to the source selection decision, notice and debriefing for unsuccessful offerors, source selection statement, and multiple selection decisions.

601 Source Selection Decision

1. The SSO shall use the evaluation factors, subfactors, and elements set forth in the solicitation to make the source selection decision. The SSO shall consider the SEB findings and the advice provided by cognizant line and staff management at the conclusion of the SEB presentation in determining which of the proposals submitted in response to the solicitation would prove most advantageous to the Government, all factors considered.

2. In accordance with NASA policy and FAR 15.613, upon source selection by the SSO, the contracting officer will proceed with negotiations leading to award of contract(s).

602 Notice and Debriefing for Unsuccessful Offerors

1. a. When a proposal is no longer to be considered for contract award, the offeror will be promptly notified by the contracting officer, in writing, together, with a general, brief explanation of the major reasons in accordance with FAR 15.1001 and NFS 1815.613-71(b)(7). There are, generally, five points in the SEB process when it may be determined that a proposal is no longer to be considered for contract award:

(1) After determination that stated qualification standards, if any, have not been satisfactorily met.

(2) After identification of an unacceptable proposal in accordance with paragraph 406.5 of this handbook.

(3) After determination of the competitive range resulting from the initial evaluation of proposals.

(4) After written and/or oral discussions resulting in a determination that a proposal does not stand a reasonable chance of being selected for award.

(5) After the selection decision by the Source Selection Official.

b. In the first four instances, the notice shall state that a revision of the proposal will not be considered. Post-selection notices shall be issued in accordance with FAR 15.1001(c) and 15.1002.

2. If any offeror requests a debriefing in writing, the offeror shall be formally debriefed and furnished the basis for the selection decision after the final source selection decision by the SSO. This debriefing should normally take place prior to contract award and be conducted in accordance with NMI 5103.1, "Debriefing of Unsuccessful Companies in Competitive Negotiated Procurements." If the situation will not permit delaying the award in order to debrief unsuccessful offerors, the debriefing may be conducted after award.

603 Source Selection Statement

1. When the final source selection decision has been made by the SSO, a Source Selection Statement shall be prepared for the SSO's signature in a manner releasable to the competing offerors and the general public, if requested. When the Administrator or an Official-in-Charge of a Headquarters Program Office is the SSO, the Statement will be prepared by the Office of General Counsel. Source Selection Statements prepared at the field installation should be drafted by the Field Installation Chief Counsel or designee.

2. Source Selection Statements must describe the procurement; the SEB evaluation procedures; the substance of the Mission Suitability evaluation; evaluation of the Cost factor, Relevant Experience and Past Performance factor, and Other Considerations factor involved in reaching the selection decision. There should be coverage of unacceptable proposals, the competitive range determination, late proposals, or any

other pertinent considerations applicable to the specific decision. It must be stressed that nothing can substitute for the use of good judgment. The Source Selection Statement must be self-sufficient and must reveal sound rationale for the selection clearly and succinctly, without revealing the scores involved, the proposed prices, or any other confidential business information.

3. Source Selection Statements shall be signed as soon as practicable after the final selection is made. The SSO may desire to have one or more key officials who participated in the selection decision concur on the Source Selection Statement prior to final signature.

4. As indicated in paragraph 1, Source Selection Statements generally may be released to competing offerors and the general public; however, it is anticipated that the Statement will not always be available in final form or signed by the Source Selection Official at the time of debriefing of unsuccessful offerors. A draft of the decision portion of the Statement that has been reviewed by the SSO or a concurring official should be available to the designated Debriefing Official for guidance at the debriefing. In order to avoid any misunderstanding, the Source Selection Statement rationale contained in the draft Statement should have the approval of the SSO or a concurring official prior to any debriefing(s). This will enable NASA to demonstrate, for the record, that the SSO's selection rationale was not modified substantially (editorial changes can be made) as a result of the debriefings. If requested by an offeror a copy of the final Source Selection Statement will be furnished to the offeror when it is signed by the SSO, subject to the provisions of paragraph 5.

5. a. Under some situations, multiple selections are made for the purpose of permitting a design or other competition to continue until a final selection is made for a single contractor to undertake full-scale development. Stating the strengths and weaknesses in the Source Selection Statement in these cases may result in the premature disclosure of innovative concepts, designs, and approaches. Release of these Selection Statements to competing offerors or the general public prior to final selection of concept(s) or contractor(s) for full-scale development could compromise the integrity of the competition by making possible a transfusion of ideas which could also inhibit offerors during the early phase from offering their best and most promising ideas for meeting the mission need.

b. Accordingly, unless prior approval is obtained through the Headquarters Procurement Operations Division (Code HS) with the concurrence of the Office of General Counsel, Source Selection Statements for the selection of alternative system design concepts subject to NMI 7100.14, "Major System Acquisitions," are not to be released to competing offerors or the general public, if requested, prior to the release of the Source Selection Statement for full-scale development.

c. A similar problem may occur in other procurements where competition continues but is not covered under NMI 7100.14, "Major System Acquisitions." When possible, care should be taken to set forth the strengths and weaknesses and other information in a manner that will avoid this problem. However, if this is not feasible, the Statement should not be released except in accordance with the procedures of the Freedom of Information Act, 5 U.S.C. 552.

604 Multiple Selection Decisions

1. While SEB procedures contemplate that the SSO will be in a position to select a single source for final contract negotiations subsequent to the SEB presentation, a variety of considerations may lead the SSO to direct that contract negotiations be conducted with two or more offerors. Such negotiations are to result in complete contract documents signed by the offerors which may be accepted by the agency upon final selection of the successful offeror by the SSO.

2. The SEB shall consult with the SSO, the contracting officer, and the negotiating team regarding negotiation positions, objectives, and information to be obtained during negotiations to assist the SEB in making its final evaluation and report after the negotiations. The objectives of negotiations are essentially the same as those where a single offeror has been selected for final contract negotiation and award; each offeror's correctable weaknesses should be pointed out and corrected during negotiations, using whatever technical and other information is known and which the Government has the right to use. Similarly, negotiations should be conducted to result in a fair and reasonable cost or price. Particular attention shall be given to any instructions which the SSO may have given when he/she directed the multiple contract negotiations.

3. The final contract negotiation process differs from the written and oral discussions previously held with offerors in the competitive range. Discussions have the specific function of obtaining information for evaluation and selection purposes, while the final contract negotiations have the additional function of presenting that information in contractually binding form. For this reason, it is essential that each offeror be brought to the most favorable terms that the negotiation process can produce, including technical and scientific approaches, management arrangements, and estimated costs (or fixed prices where applicable). The

prohibition against auction techniques in FAR 15.610(d)(3) is equally applicable to these negotiations.

4. Upon completion of the negotiations and agreement on contract terms, the SEB shall conduct a final evaluation, focusing on a comparative analysis of the contracts negotiated, their relative strengths and remaining weaknesses, their estimated costs and fee(s)/prices and probable costs, and any other factors that might influence the selection. The evaluation must build on the SEB's earlier report and presentation to the SSO which resulted in the decision to have multiple contract negotiations conducted. The evaluation is to determine the effects, if any, of the contract negotiations on the SEB's earlier final Mission Suitability scores as well as on evaluation of Cost, Relevant Experience and Past Performance, and Other Considerations; however, an arithmetic rescoring is not to be accomplished. A summary of the results of the evaluation shall be prepared for presentation to the SSO including any changes in the SEB's assessment of each proposal. The revisions may be expressed in a narrative analysis including an appropriate adjectival rating.

5. a. Upon completing its evaluation of the results of contract negotiations, the SEB shall report its findings to the SSO. This is to be accomplished by oral presentation and supplemental written report. When the Administrator is serving as the SSO, this should be preceded by preliminary presentations to the Field Installation Director and to the Official-in-Charge of the cognizant Headquarters Program Office.

b. The report and presentation shall include the following:

(1) A summary review of the previous report and presentation.

(2) A brief discussion of significant weaknesses and strengths of the companies involved, as reported and presented in the previous report and presentation, with emphasis on key dis-criminators, if any.

(3) A discussion of how any instructions given by the Source Selection Official were carried out.

(4) The results of the negotiation, and the impact, if any, on the SEB's findings and conclusions in the previous report, including Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations, as appropriate.

(5) Discussions of any matters or areas of substance that arose during the negotiations and that were not present in the proposals or the earlier oral and/or written discussions or BAFO's.

6. The contracting officer should be present and should participate, as appropriate, in the presentation to the SSO. The contracting officer or designee will bring to the presentation copies of the contracts signed by the offerors.

Appendix A to Appendix I of 1870.303—Sample Letter of Designation

TO:
FROM:
SUBJECT: Source Evaluation Board (SEB) for ____

Pursuant to Chapter 2 of the NASA Source Evaluation Board Handbook (NHB 5103.6), I hereby designate the following individuals to serve as members of the SEB for the purpose of evaluating proposals received in response to the solicitation for ____:

Chairperson

Name of individual, functional title, and organizational assignment.

Other Voting Members

Names of individuals, functional titles, and organizational assignments.

SEB Recorder

Name, functional title, and organizational assignment.

Nonvoting Ex Officio Members

Name, functional title, and organizational assignment.

The SEB will conduct its business in strict accordance with the provisions of the SEB handbook. The SEB Chairperson is responsible for determining that each SEB member (both voting and nonvoting) is fully conversant with the instructions contained in the handbook. SEB duties will take precedence over other regular duties of the SEB members.

Attention of the SEB Chairperson and each SEB member is particularly directed to Chapter 2 of the SEB handbook which describes the roles of key participants in the SEB process, including cognizant line and staff management, the SEB, and the Source Selection Official (SSO). The importance of the SEB function to agency programs necessitates continual management involvement throughout the evaluation and selection process.

It is emphasized that the SEB report and presentation are the principal tools available to the SSO to perform a comparative analysis for making the final source selection decision and must be presented in sufficient depth to permit the intelligent weighing of alternatives. All proposals will be evaluated and reported in accordance with the SEB handbook. The SEB's written findings will give no consideration to elements which are extraneous to the objectives of this procurement.

Attention of the SEB Chairperson and the SEB is further directed to FAR 15.612(e) and Chapter 2 of the SEB handbook which prohibit the disclosure of information to anyone who is not also participating in the same evaluation proceedings. After receipt of proposals, all information contained in the proposals submitted for evaluation will be protected and will be made available only to the members (voting and nonvoting) of the SEB and to properly designated committees and panels on a need-to-know basis. The right to information on a need-to-know basis does not extend to the normal chain of supervision of any member of the SEB or to any individual having technical responsibility for the effort being evaluated except as specifically approved by the SEB Chairperson on a case-by-case basis. Individuals so designated by the SEB Chairperson will be notified, in writing, of the privileged character of proposal information.

Signature of Designating Date Official

Date

Appendix B to Appendix I of 1870.303—Individual Certificate for Source Evaluation Board Participants

1. I, the undersigned, a participant in the Source Evaluation Board (SEB) proceedings for the competition of the __________ contract, certify that I will not discuss or reveal any information concerning these SEB proceedings to anyone who is not also participating in the same SEB proceedings, and then only to the extent that such information is required in connection with such proceedings on a need-to-know basis.

2. I further agree that at any time I discover that I have an interest in, or connection with, a company submitting a proposal for evaluation by the Board or advisory committee on which I serve, I shall promptly report, in writing, the fact of my interest or connection, and the nature of it, to the person who has appointed me to the Board or advisory committee, through the SEB Chairperson. I recognize that a reportable interest or connection includes the following:

a. Ownership of a company's securities by myself or my spouse.

b. A close family relationship to an official of a company submitting a proposal or participating as a subcontractor.

c. Any other interest in or connection with a company which might tend to subject NASA to criticism on the basis that such interest or connection would impair my objectivity in participating on the Board or advisory committee of which I am a member.

3. I further certify that I have read and understand NHB 1900.1, "Standards of Conduct for NASA Employees."

4. In addition, I fully realize that any breach by me of my obligation to safeguard and not disclose to unauthorized persons any information made available to me concerning the evaluation may result in appropriate disciplinary action, provided for by law or regulation, being taken against me by duly constituted authority.

Signature Date

Date

Appendix C to Appendix I of 1870.303—Guidelines for the SEB Report and Presentation to the Source Selection Official

I. Introduction

A. In preparing the SEB report and presentation, emphasis should be placed on substance. This Appendix C provides guidance on content and format of the SEB report and the oral presentation to the SSO. This guidance is designed to be appropriate for most procurements. If a specific procurement has peculiarities which cause the proposed format to be impractical, the SEB Chairperson may alter it in any manner that does not detract from the substance.

B. The findings of the SEB are presented in two parts, the written SEB report and an oral presentation. This Appendix sets forth the minimum requirements. The detail and use of additional schedules or other information are, of course, governed by the nature and scope of the subject being presented.

C. The SEB shall approve the written report and the graphic material to be used for the accompanying oral presentation. Viewgraph presentations are appropriate where the nature of the presentation permits. Copies of visual aids to be utilized for the oral presentation should be separately bound in a folder identified as "Briefing Charts" to accompany the written report.

D. A "Glossary of Terms" should be included in the SEB Report when appropriate to define acronyms or abbreviations.

E. Copies of the SEB report and related briefing charts shall be serially numbered and controlled by the Recorder and may be distributed or disclosed only to persons having responsibilities relating to the specific source evaluation proceeding involved, except as may otherwise be approved by the Administrator or designee.

II. Written SEB Report

A. Description of the Requirement

1. *Procurement Description.* Provide a narrative description of the technical requirement being procured together with its scientific objectives. Explain any follow-on effort which has been planned or for which program approval will be requested. Describe the relationship with other efforts in process or planned. Explain any particular

technical complexities which had an important effect on the solicitation or the evaluation of proposals. Include a table of contents in the report.

2. *Funding.* State the funding applicable to the effort including:

a. The Government estimate for the procurement, if feasible.

b. The estimated amount to be obligated under the basic contract.

c. The estimated amount to be obligated under each priced option.

d. The estimated cost of any follow-on effort to be procured under separate contract, e.g., subsequent phases.

3. *Procurement Approach.* a. State the date that the applicable procurement plan was approved.

b. Discuss any special procurement considerations which applied to the procurement being evaluated, e.g., the use of phased procurements.

c. Explain how the use of the type of contract approved in the procurement plan will advance NASA objectives; give reasons and rationale for the selection of contract type, including the applicability or inapplicability of the various incentive concepts (award fee, cost, performance, schedule, and multiple).

B. SEB Roster and Chronology of Events

1. *SEB Roster.* Include the SEB designation letter and any changes to it. As a supplement, provide the names, functional titles, and organizational assignments of the chairpersons of any committees and panels used by the SEB.

2. *Chronology.* Provide a chronology of major events connected with the source evaluation, such as:

a. The date(s) the source list and the Statement of Work were received for consideration by the SEB.

b. The dates the evaluation factors, subfactors, elements, and their definitions for incorporation into the solicitation, the relative weights of factors and the qualification standards, if applicable, were approved.

c. The date(s) the SEB with the assistance of the cognizant procurement and program or project offices approved the source list and the RFP.

d. The date the RFP was issued.

e. The date and place of any preproposal conference.

f. The date(s) of any RFP amendment(s).

g. The due date for receipt of proposals.

h. The date(s) and disposition of any late proposal(s) received.

i. The date the SEB was convened for proposal evaluation.

j. The date of the competitive range determination.

k. The dates and places of discussions with each offeror in the competitive range.

l. The date the request for BAFO's was issued.

m. The common cutoff date for conclusion of discussions and receipt of BAFO's.

n. The date the SEB completed its findings.

o. The date of the presentation to the SSO.

3. *Sources.* Provide a composite list, in alphabetical order, of all sources solicited and sources submitting proposals by company name and address. The list should be footnoted to explain any code used. Include a list of team members and subcontractors for those companies that submitted proposals.

C. Evaluation and SEB Findings

1. *Factors, Subfactors, Elements, and Weights*—a. *Qualification Standards.* State any specific qualification standards included in the RFP, and explain why each was necessary.

b. *Evaluation Factors, Subfactors, and Elements.* State the evaluation factors used in the evaluation and their relative order of importance. State the Mission Suitability subfactors and elements, if any, their definitions, and the weights assigned to each. Explain the rationale for the proportionate weights assigned to each subfactor and element, if any, set forth relevant excerpts from the RFP which describe the evaluation factors, subfactors, and elements, if any, and their relative importance.

2. *Evaluation Process*—a. Discuss assignments made to committees and panels. Identify the factors, subfactors, and/or elements assigned for review and the rationale for assignment. Include any individual committee report necessary to understand the SEB results.

b. Discuss the adjective rating and numerical scoring methods and techniques used by the SEB.

c. Discuss the procedure used for the determination of the competitive range.

d. Describe the steps taken in verifying the offeror's relevant experience, past performance, and current capabilities, e.g., plant visits, customer checks, and audit reports.

e. Provide a summary of written questions common to all offerors and specific written questions addressed to particular offerors.

f. State the common cutoff date for conclusion of discussions and receipt of BAFO's.

g. Include an exposition of the SEB proceedings that is sufficient to verify proper procedures were followed and sufficient to bring out any procedural irregularities that might exist. Procedural problem areas, if any, are to be covered specifically.

h. Include copies of all letters addressed to or from the SEB regarding the SEB proceedings.

3. *Initial Evaluation Findings*—a. *Summary Schedules*. Provide the following schedules:

(1) A single schedule listing all proposals in descending order of scores received for Mission Suitability stating the assigned score for each subfactor and weighted element. Each proposal should also be classified with the appropriate adjectival rating which indicates the SEB's composite appraisal of the Mission Suitability evaluation. In addition, the appropriate summary or adjectival rating for Cost, Relevant Experience and Past Performance, and Other Considerations should be included as a part of this schedule.

(2) Provide summary charts of what the SEB considers to be the significant discriminators.

b. *Statement of Findings*. (1) Discuss briefly each proposal determined to be unacceptable and the rationale for the decision.

(2) Discuss each acceptable proposal in descending order of Mission Suitability scores. Include each offeror's estimated cost or price providing a breakdown by element (labor, material, subcontracts, overhead, G&A, and fee); provide the SEB's analysis and evaluation of the adequacy (for all offerors, including those not within the competitive range), realism (for all offerors determined to be within the competitive range), and most probable cost (for at a minimum, each proposal within the competitive range) of each respective cost proposal. Discuss the SEB's evaluation of Relevant Experience and Past Performance and Other Considerations. Include a discussion of the following considerations:

(a) Evaluation of the proposal as related to each factor, subfactor and element and to the approved evaluation plan in sufficient detail to permit examination of the findings of each evaluation phase and to trace discriminators to the final results. Where changes in rating or scoring have occurred during the process, a logical visible thread of the rationale for such changes in rating or scoring should be provided.

(b) Provide a discussion of the major and minor strengths and weaknesses of the proposal with an estimate of the potential for correction of weaknesses identified. Clearly list the strengths and weaknesses and identify them as major or minor, in addition to the narrative, to provide clear traceability throughout the evaluation process.

(c) Provide an analysis of key personnel

(d) Discuss significant changes in the proposal, including the elimination of any correctable weaknesses, that would have to be negotiated after selection with a discussion of the negotiation cost objectives associated with those changes.

(e) Discuss the evaluation of the Cost factor, including the effects of the proposed cost on the technical and management effort.

(f) Provide a best estimate of the probable cost of performance, if selected, together with an indication of the confidence in the SEB's estimate.

(g) Provide any information or analysis that would be helpful to the SSO in determining the impact of cost in making a selection decision.

(h) Provide information to reflect the offeror's financial capability to perform the contract effort. A listing of possible information includes:

(i) Complete name and location of the organizational element proposing the effort.

(ii) Complete name and location of the parent corporation, if any.

(iii) Place or places of performance of the proposed effort.

(iv) Recent history of sales (of the particular division or entity involved), by customer, including industry and Government customers.

(v) Sales projections, by customer, for the period involved in the procurement.

(vi) Recent history of earnings of the division or entity involved in the procurement, if available.

(i) Present a brief analysis of the fee arrangement including any incentive arrangements proposed, e.g., how the rewards would be earned or lost, the benefit to NASA, and any changes to be sought in negotiations (target minimum or maximum fee levels, sharing formula, or ceiling) which will improve the coverage of the incentive toward the attainment of the NASA objectives. Indicate whether, and for what reason, any offeror took exception to or suggested an alternative to the arrangement contemplated in the RFP. Provide an analysis of the importance the SEB attaches to such an exception or alternative.

(j) Provide detailed information on Relevant Experience and Past Performance. Provide information on the offeror's response to the RFP requirements for data in this category, the evaluation of the data by the SEB, the sources or references contacted, etc.; summarize conclusions and highlight significant accomplishments or failures. Provide the rationale for the adjectival rating of the SEB.

(k) Discuss the evaluation of Other Considerations and the rationale for the adjectival assessment of each subfactor under this factor.

4. *Competitive Range Determination*. Discuss the competitive range determination and the rationale for the decision, summarizing the evaluation findings that provided the basis for the decision.

5. *Written and/or Oral Discussions*. a. Summarize the content of the written and/or oral discussions, the personnel included

in the proposal who were invited to participate, and the list of attendees, including both Government and offeror personnel.

b. Discuss the time allotted for receipt of BAFO's and each proposal revision received.

6. *Final Evaluation Findings.* Summarize the BAFO revisions and provide a discussion of the evaluation of the revised proposals and any resultant changes in rating or scoring. Provide the rationale for any changes. Clearly identify from the previous list of major and minor strengths and weaknesses any revisions, additions, and/or deletions to provide clear traceability throughout the evaluation process.

7. *Oral Presentation.* a. The SEB Chairperson is normally responsible for conducting the presentation to the SSO. It is the Chairperson's function to convey concisely and accurately the results of the SEB deliberations to permit an informed and objective selection of the best source for the particular procurement.

b. As a general rule, the SEB Chairperson's prepared oral presentation should not exceed an hour to be followed by a question and answer period. Copies of the viewgraphs to supplement the SEB report forwarded to the SSO are to be available to those attending the oral presentation. Relevant backup material is to also be available at the presentation.

c. The main thrust of the oral presentation is to focus upon issues and problems identified by the SEB's findings and to highlight the reasonable alternative choices available to the SSO. This presentation must include an explanation of any applicable qualification standards; evaluation factors, subfactors, and elements; the major strengths and weaknesses of the offerors; the Government estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; the results of written and/or oral discussions; the BAFO's; the final evaluation findings; and the final adjectival ratings and scores. These aspects of the report are central to its meaning, and must be reviewed in the oral presentation despite the redundancy to the written report.

d. The presentation shall clearly indicate any discriminators. This requires the presentation of scores in enough detail to provide an adequate basis for the SSO to assess the validity of the judgments made by the SEB. This detail shall extend at least to all levels of subfactors and numerically scored elements.

e. A suggested progression of charts follows. Brevity and understandability are key. Charts should highlight the significant aspects of the comprehensive written report. They should prompt discussion. Sample charts are not included in this handbook since these tend to lead toward unnecessary or even inappropriate standardization. As appropriate, the Assistant Administrator for Procurement will, from time to time, disseminate sample charts illustrative of approaches or techniques of exceptional merit and usefulness.

(1) *Identification of the Procurement.* This chart should identify the installation, the nature of the services or hardware to be procured, some quantitative measure including the Government estimate for the procurement, and the kind of contractual arrangement planned. Detailed objectives of the procurement should be avoided.

(2) *Background.* This item is useful to identify any earlier phases of a phased procurement or, as in the case of continuing support services, to identify the incumbent and any consolidations or proposed changes from the existing structure.

(3) *Evaluation Factors, Subfactors, and Elements.* An explanation of any qualification standards and the evaluation factors, subfactors, and, if utilized, elements, along with assigned weights, is an important part of any presentation of SEB findings. The relative order of importance of the evaluation factors and, within Mission Suitability, the numerical weights of the subfactors and, if utilized, numerically scored elements should also be presented. The adjectival scoring system utilized as an aid in evaluation of Mission Suitability should be presented.

(4) *Sources.* This chart will indicate the number of potential offerors solicited, the number of potential offerors expressing interest, e.g., attendance at a preproposal conference, and the identification of offerors submitting proposals in response to the solicitation. Small businesses, small disadvantaged businesses, and women-owned businesses can be identified here. In addition, a chart must be included for each offeror indicating the Chief Executive Officer, the location of the offeror, some representative products, and similar information for each major subcontractor proposed.

(5) *Summary of Findings.* The summary chart shall, as simply as possible, list the initial Mission Suitability ratings and scores, the final Mission Suitability ratings and scores, the offerors' proposed costs/prices, and the SEB's assessment of the probable costs. In addition, any clear discriminator, problem, or issue which could have an effect upon the selection should be introduced at this time. The determination of competitive range must be addressed here.

(6) *Strengths and Weaknesses of Offerors.* These charts can be among the most valuable presented, and its preparation could initially assist the SEB Chairperson in distilling the essence of the SEB's findings. Certain guidelines should be followed in the preparation of these charts:

(a) Only the major strengths and weaknesses of individual offerors should be selected for presentation. The significance of strengths and weaknesses is lost when exhibited in long lists without distinction as to importance.

(b) The strengths and weaknesses should be directly related to the evaluation factors, subfactors, and elements.

(c) Strengths and weaknesses should be as clear as charting techniques and limitations will permit. Care should be taken to avoid an analysis of strengths and weaknesses based totally on numerical scores. This practice limits the SEB and the SSO in their evaluation and selection. For example, not all major weaknesses could be considered of equal value—some are correctable during negotiations and some are not.

(d) It is important to indicate the significance of major weaknesses. Can they be corrected during negotiations? If so, at what cost?

(e) The results and impact, if any, of written and/or oral discussions and BAFO's on ratings and scores must be clearly indicated.

(f) Key personnel charts must be included in the presentation, providing a list of the key personnel for each offeror together with, as appropriate, their educational background, general background, and any pertinent details applicable to this procurement.

(7) *Final Mission Suitability Ratings and Scores.* This chart is to summarize, as simply as the material will permit, the evaluation subfactors and elements, the maximum points achievable, and the scores of the offerors in the competitive range.

(8) *Final Cost Evaluation.* This chart summarizes probable costs associated with each offeror including proposed fee arrangements. The data should be as accurate as possible; therefore, SEB adjustments to achieve comparability should be shown. Further, the presentation of this chart should include the measure of confidence the SEB has in the costs of the individual offerors, noting the reasons for low or high confidence.

(9) *Relevant Experience and Past Performance.* This chart should reflect the summary conclusions. This information is to be supported and amplified by specific case data with particular emphasis on exemplary or inferior performance and its potential bearing on the instant procurement.

(10) *Other Considerations.* This chart lists and discusses the Other Considerations addressed in the RFP, providing an appropriate adjectival rating for each of the Other Considerations subfactors.

(11) *Special Interest.* This chart should include only information of special interest to the SSO that has not been discussed elsewhere, e.g., procedural errors or other matters that could have an effect on the selection decision.

[54 FR 28373, July 5, 1989, as amended at 55 FR 27090, June 19, 1990]

Subpart 1870.4—NASA Credit Card System

SOURCE: 54 FR 53632, Dec. 29, 1989, unless otherwise noted.

1870.401 Purpose.

The NASA credit card system provides a means for using credit cards for small purchases.

1870.402 System content.

(a) The regulations governing the use of credit cards are set forth at 1813.7104.

(b) The system contains specific procedures for use by procurement personnel and by the wide range of individuals who participate in the credit card program. These procedures integrate diverse regulatory and operational information from numerous sources in a user-oriented document.

1870.403 NASA procedures for the credit card system.

(a) Credit card procedures are prescribed by Appendix I to this section 1870.403.

(b) NASA may reprint Appendix I as a separate document, provided the following conditions are met:

(1) The issuance date ("cover date") of the procedures shall be the date of the NASA FAR Supplement version from which the text is extracted.

(2) With the exception of availability, distribution and other special prefatory notices, any subsequent modification in the text shall be preceded by a change to the NASA FAR Supplement 1870.403, Appendix I.

(3) The following notice shall be included in the prefatory material of the Handbook:

IMPORTANT NOTICE

These procedures are a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.403) Section 1870.403, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.403, Appendix I, without issuing a new edition of these procedures. In the event of apparent conflict between these procedures and the NFS, the NFS shall govern.

APPENDIX I TO 1870.403

NASA Procedures for Using the Governmentwide Commercial Credit Card Service

1. Introduction

(a) At the request of the Office of Management and Budget (OMB), the General Services Administration (GSA), Federal Supply Service (FSS) awarded a single schedule contract (Federal Supply Schedule No. OOCC 6150, Industrial Group 615, IG Class 6153) for Governmentwide commercial credit card service to Rocky Mountain BankCard System, Inc. (contractor). The contract is intended to provide, at the request of federal ordering agencies, Governmentwide commercial credit cards and associated services to civilian and military Government employees for the purpose of paying for purchases made for official Government purposes.

(b) These procedures are designed as the NASA supplement to the "Instructions for the Use of the U.S. Government Credit Card" distributed to the cardholder and "Approving Official Instructions for the Use of the U.S. Government Credit Card" distributed to the approving official at the time the card is issued. In the event these procedures conflict with the instructions provided by the contractor, these procedures take precedent. All purchases that will be paid for using the card shall comply with the Federal Acquisition Regulation (FAR), the NASA FAR Supplement (NFS) and these procedures.

2. Definitions

(a) *Administrative Office Contact.* The Administrative Office Contact is the focal point appointed by the Procurement Officer for coordination of the applications, issuance and destruction of cards, establishment of reports, and administrative training.

(b) *Approving Official.* The approving official is the person who reviews and approves the cardholder's monthly statement of purchases.

(c) *Cardholder.* The cardholder is the individual to whom a card is issued. The card bears this cardholder's name and may only be used by this individual to pay for authorized U.S. Government purchases.

(d) *Contractor.* The contractor is the organization that will maintain all accounts as required by the General Services Administration contract.

(e) *I.M.P.A.C.* I.M.P.A.C., which is printed on all cards furnished by the contractor, stands for "International Merchant Purchase Authorization Card." These initials will also appear on most forms provided by the contractor.

(f) *Oral Procedure.* Oral procedure means a procedure where an order is placed or a purchase is made through an oral agreement which is made in person or by telephone by providing the card for imprint by the vendor or the card number to the vendor. No written purchase order or contract is issued by the Government. The supplies or services are provided by the vendor and payment is made using the I.M.P.A.C.

(g) *Statement of Account.* The Statement of Account is a monthly listing of all payments authorized for purchase and credits made by the cardholder and billed by the merchant.

3. Responsibilities

(a) *Contractor.* The contractor will issue cards to cardholders and send out monthly statements to cardholders, approving officials, and financial management offices. The contractor will pay merchants in a timely manner and will receive reimbursement from the financial management office of each NASA installation.

(b) *Contracting Officer's Technical Representative (COTR).* The COTR appointed by the Procurement Officer will serve as the liaison between the installation and the contractor. The COTR shall oversee the I.M.P.A.C. program and establish installation guidelines. The COTR shall establish authorization codes for controlling purchases. Changes to dollar limitations or authorized merchant codes must be approved by the COTR.

(c) *Cardholder.* Each cardholder is to reconcile his/her monthly statement and forward the reconciled statement to his/her approving official. Detailed instructions are included in paragraph 12 and in the cardholder instructional pamphlet, "Instructions for the Use of the U.S. Government Credit Card," issued by the contractor.

(d) *Approving Official.* The approving official will review the cardholder's monthly statement and serve as liaison with the Administrative Office Contact, the Financial Management Office, and the COTR. Each approving official shall establish, after coordination with the Administrative Office Contact, a budgetary limit for each cardholder's monthly purchases. The approving official will certify the cardholder's monthly statements and ensure that payments are for purchases which are authorized and made in accordance with FAR and NFS. Detailed instructions are included in paragraph 12 and in the approving official's instructional pamphlet, "Approving Official Instructions for Use of the U.S. Government credit card," issued by the contractor. The approving official will also assist the cardholder in resolving disputed payments. The approving official has authority to direct the COTR to instruct the contractor to cancel a card at any time.

(e) *Administrative Office Contact.* The Administrative Office Contact shall establish a budgetary limit for each office that does not exceed the sum of the approving official's cardholders' monthly purchase limits. The Administrative Office Contact, in conjunction with the COTR, shall coordinate, process and monitor resolution of all disputed purchases, credits or billing errors, unless the Procurement Officer designates another individual or office to perform this function.

(f) *Financial Management Office Contact.* The Financial Management Office Contact shall answer the contractor's questions about payment of monthly statements.

4. Use of the I.M.P.A.C.

(a) The I.M.P.A.C. may be used to pay for small purchases made in accordance with part 13 of the FAR and the NFS. It may also be used to pay for orders placed against established requirements contracts or with established sources of supply (see FAR part 8), when authorized by the contract or regulation requiring use of the source. However, installation stocks/inventories must be checked for availability prior to credit card purchase.

(b) The I.M.P.A.C. can be used to pay for supplies or services acquired using oral solicitation procedures. It may also be used to pay for supplies or services that are acquired through a purchase order or an individual order under a requirements contract where the contract specifically allows such payment method. Without exception, the I.M.P.A.C. may only be used to pay for authorized U.S. Government purchases.

(c) Under no circumstances will the I.M.P.A.C. be used for cash advances.

5. Setting Up the I.M.P.A.C. Account

The contractor will provide the Administrative Office Contact with all the necessary application forms (cardholder, approving official, disputes, destruction notice etc.). The Administrative Office Contact will distribute the forms to the selected cardholders and approving officials for completion. Upon completion, the Administrative Office Contact shall process and forward the forms to the contractor. The card will be mailed to the cardholder within ten working days after the application is received by the contractor. When the cardholder receives the card, he/she must immediately return the enclosed notice to the contractor in order to notify the contractor that the card has been received. The contractor is capable of providing various reports to meet management and administrative needs. During the account setup process, the Administrative Office Contact will discuss the various reports available with management personnel and submit requirements to the COTR.

6. Signature Cards

When the account information is submitted to the Administrative Office Contact, a signature card must be completed by each approving official that states the approving official may approve the accuracy of the Statement of Account for payment. The signature card will be forwarded to the appropriate financial management office after completion. An alternate approving official must be designated to avoid statement processing delays and late payment penalties.

7. Dollar Limits Associated With the Card

Use of the credit card by a cardholder is subject to a single purchase limit, a monthly cardholder limit and a monthly office limit. The purpose of these dollar limits is as follows:

(a) *Single Purchase Limit.* The single purchase limit is a limitation on the procurement authority delegated to the cardholder. This limit cannot be exceeded unless a revised delegation of authority is issued by the Procurement Officer raising the limit. A "single purchase" using the card may include multiple items. However, no single purchases may exceed the authorized single purchase limit established for each cardholder. The application for the cardholder will be completed in accordance with the Purchase Limit Matrix in the Federal Supply Schedule contract.

(b) *Monthly Cardholder Limit.* The monthly cardholder limit is a budgetary limit assigned by the approving official. The approving official shall coordinate with the Administrative Office Contact when determining a monthly limit. The total dollar value of purchases when using the card for any single month may not exceed the monthly purchase limit set by the approving official.

(c) *Monthly Office Limit.* The monthly office limit is a budgetary limit established by the Administrative Office Contact and shall not exceed the sum of the approving official's cardholders' monthly purchase limit and should reflect spending history as well as budgetary trends. The total dollar value of purchases using the card shall not exceed the monthly office limit.

8. Administrative Fee

The monthly statement to each cardholder by the contractor will include an administrative fee which is calculated as a fixed percentage of the total dollar value of purchases. Each installation financial management office shall implement procedures to ensure funds to cover the monthly administrative fee are available.

9. Authorized Use of the Card

(a) The unique I.M.P.A.C. VISA card that the cardholder receives has his/her name embossed upon it and may be used only by that cardholder. No other person is authorized to use the card. The card was specially designed showing the great seal of the U.S. and "United States of America" imprinted upon it to avoid being mistaken for a personal credit card.

(b) When issuing this card to an employee, authorization codes will be established by the COTR and the Administrative Office Contact and will be incorporated in the card. Under normal circumstances, merchants are required to obtain authorization from the contractor for purchases over $50.00. However, many merchants now use electronic authorization methods allowing them to obtain authorization for all purchases regardless of amount. When authorization is sought for a purchase by the merchant, the the contractor authorization system will electronically check each individual cardholder's single purchase and monthly limits, the monthly office limit, and the type of merchant where the cardholder is making the purchase before authorization for the transaction will be granted.

(c) Use of the card must meet the following conditions:

(1) The total of a single purchase to be paid for using the card may be comprised of multiple items and cannot exceed the authorized single purchase limit. Purchases will be denied if the authorized single purchase limit is exceeded. Payment for purchases may not be split in order to stay within the single purchase limit.

(2) All items purchased over the counter to be paid for using the card must be immediately available. No back-ordering is allowed.

(3) All items purchased by a telephone order that will not be confirmed with a written order and be paid for using the card should generally be delivered by the merchant within the 30-day billing cycle. However, a longer period (up to 120 days for delivery) may be utilized by the installations. If the longer period is elected, installation procedures need to be established for proper reconciliation of the monthly bills, allowing for the carrying forward of items ordered but not received.

(4) All items purchased during one telephone transaction that will not be confirmed by a written order should generally be delivered in a single delivery. If an installation elects to allow partial deliveries, installation procedures must be implemented to ensure proper reconciliation of all such orders.

(5) All accountable personal property items pruchased and paid for using the car must have the input and concurrence of the Supply and Equipment Management Officer; the NASA Equipment Management System (NEMS) must be screened prior to purchase; and, the items purchased must be processed through the installation receiving function so the proper tagging can be done and the required accountability established. (See NHB 4200.1.)

(6) When purchasing items by phone or over the counter, the cardholder should inform the merchant that the purchase is for official U.S. Government purposes and therefore is not subject to state or local tax. The card will be imprinted with "US Govt Tax Exempt" for additional clarification.

(7) Prior to use of the card for an individual purchase, funds must be certified as available by an authorized individual within the installation Financial Management Office.

10. Unauthorized Use of the Card

(a) The card must not be used for the following: (1) Cash advances; (2) Rental or lease of motor vehicles; (3) Rental or lease of land or buildings; (4) Purchase of airline, bus, train, or other travel related tickets; (5) Purchase of meals, drinks, lodging, or other travel or subsistence costs; (6) Purchase of gasoline or oil for Interagency Fleet Management automotive vehicles; (7) Repair of Interagency Fleet Management automotive vehicles; and (8) Purchases of telecommunications and telephone equipment.

(b) Purchases of the following items are specifically governed by the FAR and NFS. Compliance with the applicable regulations is required when purchasing these items. (1) Non-expendable property; (2) Janitorial, yard and maintenance services, other than repair services; (3) Personal clothing or footwear, except emergency situations when required for safety; (4) Printing or copying services; (5) Telephone calls.

11. Acquisition Procedures for Use When Paying With the I.M.P.A.C.

(a) *General.* When making purchases that will be paid for using the I.M.P.A.C., all the applicable acquisition regulations apply. Regardless of whether the open market purchase is made using oral procedures or using a written purchase order or contract, the cardholder must:

(1) Ensure that funds are available and certified to pay for the items being purchased. A funded Purchase Request (PR) shall support each credit card purchase. The PR may be bulk funded.

(2) Reserve small purchases for small business in accordance with Public Law 95-507 (FAR 13.105).

(A) The Law provides that each acquisition of supplies or services which has an anticipated value of $25,000 or less and which is subject to small purchase procedures shall be reserved exclusively for small business concerns. Therefore, when offers are solicited, they should be from small business concerns only, unless the contracting officer (cardholder) makes a written determination that there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns (one, if the purchase does not exceed $1,000) that will be competitive in terms of market price, quality, and delivery. If the purchase is not made from small business, the contracting officer must document the reason for not purchasing from a small business concern.

(B) The requirement for purchasing from small business does not waive the requirement to make purchases from required sources of supply or mandatory Federal Supply Schedules (FAR part 8).

(3) Solicit competition for purchases in accordance with FAR 13.106.

(A) Oral solicitations should be used whenever possible. Written solicitations are mandatory under the FAR when purchasing construction work over $2,000. In addition, written solicitations should be used when purchasing services which are subject to Service Contract Act wage determinations.

(B) The FAR recommends that written solicitations be used when (i) a large number of line items are included in a single proposed acquisition, (ii) obtaining oral quotations is not considered economical or practical, (iii) special specifications are required because items or services cannot be easily explained or (iv) suppliers are located outside the local trade area (there may be instances, however, where it is appropriate to use the cards for purchases outside the local trade area).

(C) Purchases not in excess of $1,000 may be accomplished without securing competition if the contracting officer considers the prices to be reasonable. These purchases are to be distributed equitably among qualified suppliers. If practical, other than the previous supplier should be solicited when placing repeat orders.

(D) A reasonable number of sources must be solicited (at least three) for purchases over $1,000. If practical, two of these sources shall not have been previously solicited. If suppliers furnish standing price quotations or catalog prices on a recurring basis, verifying the quotations or prices for individual purchases is not necessary, but the prices should be periodically confirmed as current. When determining the number of sources to solicit, consider (i) the nature of the item or service to be purchased and whether it is highly competitive, (ii) information from recent purchases of the same or similar item or service, (iii) the urgency of the purchase, (iv) the dollar value of the purchase, and (v) past experience concerning dealers' prices.

(4) Document the record regarding competition and reasonableness of price as required by FAR 13.106(c). FAR 13.106(a)(4) cites two instances when action must be taken to verify price reasonableness of purchases not exceeding $1,000: (1) The contracting officer suspects or has information to indicate the price may not be reasonable or (2) when purchasing an item for which no comparable pricing information is available. The file must contain an explanation of how price reasonableness was determined in those instances.

(5) Purchase only domestic end products, except as provided in FAR subpart 25.1. The Buy American Act requires that only domestic end products be procured unless (A) the products or materials are for use outside the United States; (B) the cost is unreasonable as determined in accordance with FAR 25.105; (C) the agency head determines that domestic preferences would be inconsistent with the public's interest; or (D) the products or materials are not mined, produced, or manufactured in the United States in sufficient commercial quantities or of a satisfactory quality.

(b) *Oral purchase procedures.* (1) Oral procedures may be used to acquire supplies or services that can be described in sufficient detail so that the parties to the agreement have a clear understanding of what is being acquired; and a purchase order or contract is not required by either the supplier or the Government.

(2) When placing a telephone order to be paid using the I.M.P.A.C., the cardholder will:

(A) Notify the vendor that the purchase is tax exempt.

(B) Confirm that the vendor is aware of all required Government terms and conditions.

(C) Confirm that the vendor agrees to charge the credit card when shipment is made so that receipt of the supplies may be certified on the monthly Statement of Account.

(D) Instruct the vendor to include the following information with the shipping documents or packing slip: (i) Cardholder name and mail code; (ii) Building number, room number, street address, city and state; (iii) Cardholder telephone number; (iv) The term: Credit Card; (v) Purchase Request or Purchase Order Number.

(3) This information will alert the receiving offices and the requisitioner that the supplies have been purchased with the credit card.

(4) A log should be used to document or record telephone credit card orders under $1,000 when competitive quotes are not solicited. If competitive quotes are solicited

best copy available

for purchases under $1,000, or if the purchase exceeds $1,000 and therefore requires competition, the record shall be documented. The documentation should be held until the monthly billing statement is received and then attached to the statement when it is submitted to the approving official.

(c) *Purchases requiring the issuance of a written order or contract.* If the I.M.P.A.C. is used to pay for a purchase made by using one of the purchase order or contract forms, the vendor should be provided the necessary information from the card orally, either in person or by telephone, and the statement "Payment to be made by credit card" should be inserted on the form. Do not include specific information from the card on the purchase order. If the vendor requires an order, an authorized installation form may be used. The vendor is given its copy of the purchase order and the contracting officer (cardholder) maintains a copy.

12. Documentation, Reconciliation and Payment Procedures

(a) Any time a purchase is made that will be paid using the card, whether it is done over the counter or by telephone, a document must be retained as proof of purchase. These documents will later be used to verify the purchases shown on the cardholder monthly statement.

(1) When a purchase is made over the counter, the cardholder is to obtain a customer copy of the charge slip, which will become the accountable document (make sure all carbons are destroyed).

(2) When making purchases by phone, the cardholder is to document the transaction on a log, annotate the PR, and attach any shipping documents associated with the order.

(b) The contractor will provide and distribute three monthly statements within five working days after the end of the 30-day billing cycle.

(1) Cardholder—will receive a statement showing all purchases, credits and other data on transactions the cardholder has made in the 30-day billing cycle.

(2) Approving official—will receive a copy of all cardholder statements for which he/she has approving authority and a summary sheet for these statements.

(3) Financial Management Office—will receive a statement providing summary data by cardholder and approving official.

(c) At the end of each monthly billing cycle, the cardholder must reconcile the information on his/her statement. The cardholder must fill in the appropriate accounting classification in the accounting code block, if not the same as the Master Accounting Code, the organization or individual for whom the purchase was made, and a description, if not provided, for each purchase. The cardholder must then sign the statement, attach all supporting documentation and forward it to the approving official or designated alternate. It is important that the cardholder check each purchase on the statement to verify the accuracy. If an item has been returned and a credit voucher received, the cardholder will verify that the credit is reflected on the statement. If purchased items and credits are not on the next monthly statement, the transaction documentation will be retained by the cardholder until the purchase or credit appears on the statement. If the purchase or credit does not appear on the next monthly statement, the cardholder or approving official must notify the Administrative Office Contact to resolve and reconcile the statement.

(d) If for some reason the cardholder does not have documentation of the transaction to send with the statement, he/she must attach an explanation that includes a description of the item, date of purchase, merchant's name and why there is not supporting documentation.

(e) The cardholder must sign the monthly statement and forward it to the approving official within five working days of receipt. If the cardholder cannot review the statement at the time that it is received, the approving official is responsible for reviewing and certifying the cardholder's statement. The approving official will go over the cardholder's statement with the cardholder upon his/her return.

(f) The approving official is responsible for the following: (1) Supplying the appropriate financial management office with the date services provided by the contractor were received and the date services were accepted. The date services were received will be the last day of the monthly billing cycle for the contractor. The date services were accepted will be the date the approving official signs the reverse side of the statement of account. If the approving official takes more than seven calendar days to accept the services, acceptance (for determining payment due date for compliance with prompt payment regulations only) will be deemed to occur seven calendar days after receipt of the services. If any purchased items have not been received or accepted by the time the statement is received, the items should be disputed using the procedures in paragraph 13, in order to prevent payment delays. It is critical that this information be supplied in order to avoid late payment penalties; (2) Certifying and signing monthly cardholder-signed statements and summary statements; (3) Forwarding signed cardholder statements and finance copies of receiving reports and supporting documents to the financial management office for payment; (4) Forwarding monthly summary statements, and the cardholder statements to the appropriate financial management office in time to be received within 15 working days of receipt by the approving official to avoid late payment penalties; (5) Retaining copies of summary statements and fund certification, solicitation and award documentation as supporting documentation on purchases. Records retention and disposition procedures in FAR 4.805 should be followed for documentation of purchases paid for using the credit card.

13. Billing Errors and Disputes

(a) If a cardholder receives a statement that lists a transaction for merchandise that has not been received, or a transaction which includes a sales tax, the cardholder (or the approving official) must notify the Administrative Office Contact and complete the Cardholder Questioned item form. The contractor will credit the transaction until the dispute is resolved. In addition, a copy of the form must be attached to the cardholder's monthly statement and sent to the appropriate financial management office.

(b) If items purchased with the card are found to be defective, the cardholder has the responsibility to obtain replacement or correction of the item as soon as possible. If the merchant refuses to replace or correct the faulty item, then the purchase of the item will be considered in dispute. Items in dispute are handled in the same manner as billing errors.

14. Contact With the Contractor

The contractor should be contacted only to report a **LOST OR STOLEN** card. All other questions should be directed to the installation points of contact referenced in these procedures. Telephone numbers are listed in paragraph 15.

15. Lost or Stolen Cards

(a) If the card is lost or stolen, it is important that the cardholder immediately notify Rocky Mountain BankCard System, Inc., at the following numbers:

(1) During business hours, Monday-Friday (8:00 AM-4:30 PM (MST))

(A) Outside Colorado—1-800-525-3717 x3900

(B) In Colorado—1-303-629-5678

(C) Outside Continental U.S.—303-629-5678

(2) After business hours and weekends (MST)

(A) Outside Colorado—1-800-525-5093

(B) In Colorado—1-800-332-9840

(b) The cardholder must also notify the approving official of the lost or stolen card within one workday after discovering the card missing.

(c) The approving official will subit a written report through the Administrative Office Contact to the Contracting Officer's Technical Representative within five workdays.

(d) The report will include: (1) The card number; (2) The cardholder's complete name; (3) The date and location of the loss; (4) If stolen, date reported to police; (5) Date and time the contractor was notified; (6) Any purchase(s) made on the day the card was lost/stolen; (7) Any other pertinent information.

(e) A new card will be mailed within two business days of the reported loss or theft. A card that is subsequently found by the cardholder after being reported lost or stolen will be cut in half and given to his/her approving official. The approving official will complete the destruction notice and forward the notice to the Administrative Office Contact.

16. Card Security

It is the cardholder's responsibility to safeguard the credit card and account number at all times. The cardholder must not allow anyone to use his/her card or account number. A violation of this trust will require that the card be withdrawn from the cardholder with the possibility of subsequent disciplinary action.

17. Separation of Cardholder

Upon separation of a cardholder, the cardholder must surrender the card to his/her approving official who will complete the destruction notice and forward the notice to the Administrative Office Contact.

18. Transfer of Cardholder to Another Approving Official

If a cardholder is transferred to another office with a different approving official, the new approving official must determine if the employee will be a cardholder within his/her office. If it is determined that the card should be kept by the cardholder, the master file can be changed by requesting, in writing, that the Administrative Office Contact have the contractor add the cardholder to the new approving official's responsibility and delete him/her from the old file without issuing a new card.

19. Unauthorized Purchases or Careless Use of the I.M.P.A.C.

(a) A cardholder who makes unauthorized purchases or carelessly uses the card may be liable to NASA for the total dollar amount of unauthorized purchases made in connection with the misuse or negligence. Also, the cardholder may be subjected to disciplinary action for unauthorized or careless use.

(b) NASA will be liable for the use of I.M.P.A.C.s by authorized users (cardholders).

CHAPTER 19—UNITED STATES INFORMATION AGENCY

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SUBCHAPTER A—GENERAL

PART 1901—UNITED STATES INFORMATION AGENCY ACQUISITION REGULATION SYSTEM

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Subpart 1901.1—Purpose, Authority, Issuance

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1901.670-5 Nonratifiable commitments.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13200, Apr. 3, 1985, unless otherwise noted.

1901.000 Scope of part.

This part describes the method by which the United States Information Agency implements and supplements the Federal Acquisition Regulation and contains policies and procedures that implement and supplement Chapter 1 of the Federal Acquisition Regulation (48 CFR).

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.

This subpart establishes the United States Information Agency Acquisition Regulation (IAAR) as Chapter 19 of the Federal Acquisition Regulations System (48 CFR chapter 19) and states the relationship of the IAAR to the Federal Acquisition Regulation (FAR), 48 CFR chapter 1.

1901.102 Authority.

The USIA Acquisition Regulation is prescribed by the Director of the United States Information Agency pursuant to the authority of the Reorganization Plan No. 2 of 1977 and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

1901.103 Applicability.

Except where a deviation is specifically authorized in accordance with subpart 1901.4 or otherwise authorized by law, the FAR and the IAAR govern all USIA acquisitions within the United States.

1901.104 Issuance.

1901.104-1 Publication and code arrangement.

(a) The IAAR is published in the FEDERAL REGISTER and, in cumulative form in the Code of Federal Regulations (CFR).

(b) The IAAR is issued as chapter 19 of title 48, CFR.

1901.104-2 Arrangement of regulations.

The IAAR uses the same numbering system and arrangement used in the FAR. Where the IAAR implements the FAR, it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, numbers beginning with 70 or higher are assigned to the IAAR supplementing part. Where the subject matter is the FAR requires no implementation, the IAAR contains no corresponding part.

Subpart 1901.4—Deviations From the FAR

1901.403 Individual deviations.

Deviations from the IAAR or the FAR in individual cases shall be authorized by the Agency Procurement Executive or a designee unless FAR

1.405(e) is applicable. The request shall cite the specific part of the IAAR or FAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reason for the action requested.

1901.404 Class deviations.

Class deviations affecting more than one contracting action shall be authorized only by the Agency Procurement Executive, unless FAR 1.405(e) is applicable, and shall be subject to the limitations set forth in FAR 1.404. Requests shall include the same information as cited in 1901.403.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.

The Director, Office of Contracts, is designated the Agency Procurement Executive. The Agency Procurement Executive is delegated the full delegable authority of the Director of this Agency with respect to the acquisition of goods and services by contract and such other methods as may be prescribed in the FAR. The Agency Procurement Executive is delegated overall responsibility by the Director for the Agency's contracting activities.

1901.602 Contracting officers.

1901.602-1 Authority.

USIA Contracting Officers designated by name on Certificates of Appointment by the Agency Procurement Executive are authorized to enter into, administer, and terminate contracts and make related determinations and findings, subject to all requirements and limitations set forth in the Certificate of Appointment. A list of USIA employees who have been appointed as Contracting Officers and the limits of their authority is available from the Policy and Procedures Staff, Office of Contracts.

1901.670 Ratification of unauthorized commitments.

1901.670-1 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts on behalf of the Government. Subject to the limitations in 1901.670-4, the Agency Procurement Executive may ratify an unauthorized commitment, provided:

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The Agency Procurement Executive could have granted or had the authority to enter into the commitment at the time it was made and still has the authority to do so; and

(c) The resulting contract would otherwise have been proper if made by an authorized contracting officer.

1901.670-2 Definitions.

Ratification, as used in this section, means that act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

Unauthorized commitment, as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

1901.670-3 Procedures.

USIA components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebant" claims.

1901.670-4 Limitations on exercise of authority.

The authority in 1901.670-1, may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(d) Funds are available and were available at the time the unauthorized commitment was made; and

(e) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

1901.670-5 Nonratifiable commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR part 50. Legal advice should be obtained in these cases.

PART 1902—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13202, Apr. 3, 1985, unless otherwise noted.

Subpart 1902.1—Definitions

1902.101 Definitions.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion of a part.

Agency means the United States Information Agency, acting through any of its duty authorized officials.

Agency Procurement Executive means the Director, Office of Contracts.

AR/CO means Authorized Representative of the Contracting Officer (see 1942.202-70).

Contracting activity means the Office of Contracts, which has the responsibility to contract for the acquisition of supplies and services (including construction).

Head of the agency (also called *Agency head*) means the Agency Director or Deputy Director; and the term *authorized representative* means any person, persons or board (other than the contracting officer) authorized to act for the Head of the Agency.

Purchasing Activity means an office with one or more Level I or Level II Small Purchases Contracting Officer(s) exercising limited redelegations of contracting officer authority.

USIA means the United States Information Agency.

PART 1903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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1903.602 Exceptions.
1903.670 Contracts between USIA and former employees.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13202, Apr. 3, 1985, unless otherwise noted.

1903.000 Scope of part.

This part implements FAR part 3, cites USIA regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 1903.1—Safeguards

1903.101 Standards of conduct.

1903.101-2 Solicitation and acceptance of gratuities by Government personnel.

USIA employees and their spouses, minor children, and members of their households may not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly, from or on behalf of an actual or prospective contractor of USIA. This general prohibition does not apply to the following:

(a) Gifts, gratuities, favors, entertainments, loans or any other thing of monetary value received on account of close family or personal relationships, when the circumstances make it clear that it is the relationship rather than the business of the persons concerned which is the motivating factor;

(b) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans;

(c) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value;

(d) Acceptance of rates and discounts offered to employees as a class. Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(e) Contractor provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable. Unless prior approval of the Agency Procurement Executive has been obtained, a full report of the circumstances of the acceptance shall be made to the employee's supervisor for inclusion in the contractor's file.

1903.101-3 Agency regulations.

(a) *General.* USIA regulations on Employee Responsibilities and Conduct are contained in 22 CFR part 10. All personnel involved in acquisition actions shall become familiar with the statutory and regulatory prohibitions. Any questions concerning them shall be referred to the Agency's Office of the General Counsel.

(b) *Non-disclosure of proposed acquisition.* Agency personnel, particularly requirements officers, project officers, technical staff and their supervisors often need to discuss standard commercial products or services, new manufacturing techniques, processes and equipment with members of industry in their efforts toward the goal of obtaining a quality product or service for the Agency. During these discussions, Agency personnel shall not disclose any information on a specific acquisition, especially its funding and scheduling. Information on proposed acquisitions shall be released concurrently to all prospective contractors in a common solicitation.

1903.103 Independent pricing.

1903.103-2 Evaluating the certification.

Whenever an offer is rejected under FAR 3.103-2 or the Certificate of Independent Price Determination is suspected of being false, the Contracting Officer shall report the situation to the Inspector General through the Agency Procurement Executive for referral to the Attorney General in accordance with FAR 3.303.

Subpart 1903.2—Contractor Gratuities to Government Personnel

1903.203 Reporting suspected violations of the Gratuities clause.

USIA personnel, particularly Contracting Officers, shall promptly report, by memorandum, suspected violations of the Gratuities clause in solicitations or contracts to the Agency Procurement Executive.

1903.204 Treatment of violations.

Suspected violations shall be treated as provided in the USIA debarment and suspensions procedures in 1909.4.

Subpart 1903.2—Reports of Suspected Antitrust Violations

1903.301 General.

The Contracting Officer shall report any instances of suspected collusion or other violations of antitrust laws in connection with competitive acquisitions to the General Counsel through the Agency Procurement Executive for possible referral to the Attorney

General in Accordance with FAR subpart 3.3.

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1903.602 Exceptions.

To avoid potential conflicts of interest or the appearance of preferential treatment, it is USIA policy not to award contracts, purchase orders, grants or cooperative agreements to Government employees or their family members or business concerns owned or controlled by Government employees or their family members. Exceptions to this policy must be approved by the Agency Director or Agency Procurement Executive and supported by written Findings and Determination. A contract with an employee for services may result in violation of the dual salary compensation statutes (5 U.S.C. 5533). Nothing in this paragraph is intended to render inapplicable the conflict of interest prohibition set out in 18 U.S.C. 208.

1903.670 Contracts between USIA and former employees.

To avoid conflicts of interest or the appearance of preferential treatment, purchase orders, contracts, grants or cooperative agreements with former employees of USIA, or with firms in which former employees or their family members are known to have controlling interest, may be entered into within two years following separation from employment only with the written approval of the Agency Director. A written justification shall be made a part of the file. The justification must address the issue of conflict of interest and conclude that it does not exist; or that in spite of its existence, the Agency's ability to meet its mission would be seriously harmed without the award.

PART 1904—ADMINISTRATIVE MATTERS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13203, Apr. 3, 1985, unless otherwise noted.

Subpart 1904.70—Procurement Requests

1904.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with Agency procedures.

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:

(1) Such action is necessary to meet critical program schedules;

(2) It has been estaolished that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and

(4) The solicitation document clearly indicates that the award is subject to the availability of funds.

(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare presolicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1909—CONTRACTOR QUALIFICATIONS

Subpart 1909.4—Debarment, Suspension, and Ineligibility

Sec.

1909.403 Definitions.
1909.404 Consolidated list of debarred, suspended, and ineligible contractors.
1909.406 Debarment, suspension, and ineligibility.
1909.406-3 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13203, Apr. 3, 1985, unless otherwise noted.

Subpart 1909.4—Debarment, Suspension, and Ineligibilty

1909.403 Definitions.

The Agency Procurement Executive, is designated the "debarring official" and the "suspending official" as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405-1(b), 9.405-2, 9.406-1(c), and 9.407-1(d).

1909.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Policy and Procedures Staff, Office of Contracts, shall be responsible for the maintenance and distribution of the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors. It will be coordinated with the Solicitation Mailing List and appropriate notations will be made on both lists, when additions or deletions are necessary. Contracting Officers shall notify the Policy and Procedures Staff, Office of Contracts, of their distribution needs and shall ensure the list is used effectively.

(b) The Agency Procurement Executive (or designee) is responsible for notifying GSA of the information required by FAR 9.404(b).

1909.406 Debarment, suspension, and ineligibility.

1909.406-3 Procedures.

(a) *Investigation and referral.* Any officer of the Agency who becomes aware of circumstances which may serve as a basis for a debarment, suspension, or ineligibility shall report the circumstances by memorandum to the Agency Procurement Executive for consideration of debarment, suspension or ineligibility action.

(b) *Decision-making process.* (1) Contractors shall be given the opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a proposed debarment or suspension. All rebuttals shall be addressed to the Agency Procurement Executive. However, if a response to the proposed debarment or suspension is not received by the Agency Procurement Executive within 30 calendar days of receipt of the notice, the debarment or suspension shall become final.

(2) If a contractor, or a representative, desires to present information and arguments in person to the Agency Procurement Executive, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the contractor. Hearings will be held before a three-person fact-finding board composed of one member each from the Office of General Counsel and Congressional Liaison, the Bureau of Management, and the Office of Contracts, other than the initiating officer. The fact-finding board shall deliver written findings to the Agency Procurement Executive (together with a transcription of the proceedings, if made) within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment or suspension exists.

(c) *Debarring/suspending official's decision.* The debarring/suspending official's final decision shall be made in writing in accordance with FAR 9.406-3 and notice of the decision will be given in accordance with FAR 9.406-3. A copy of the notice shall be given to the affected agency component.

PART 1910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

1910.004-70 Brand name products or equal.
1910.004-71 Limits on the use of brand name or equal purchase descriptions.
1910.004-72 Solicitations, brand name or equal descriptions.
1910.004-73 Offer evaluation and award, brand name or equal descriptions.
1910.004-74 Procedure for negotiated, procurements and small purchases.
1910.011 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13204, Apr. 3, 1985, unless otherwise noted.

1910.004-70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 10.004(a)(2), USIA acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference thereto shall be deleted from subsequent purchase description.

(c) *Specifying essential characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. (See 1910.004-73.) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1910.004-71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision of 1952.210-70 would be impracticable, the requirement to include the entry described in 1910.004-72(a) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practicable.

(c) *Approval required.* A brand name or equal purchase description shall not be used unless it has been approved at one level above the contracting officer.

1910.004-72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding on:

Manufacturer's Name: ______________

Brand: ______________

No.: ______________

(b) Because bidders frequently overlook the requirements of the clause at 1952.210-70 "Brand Name or Equal," the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause.

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision "Brand Name or Equal" set forth in 1952.210-70 of the solicitation).

(c) If offeror samples are requested for brand name or equal acquisitions, the above notice shall not be included in the solicitation.

1910.004-73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

1910.004-74 Procedure for negotiated procurements and small purchases.

(a) The policies and procedures prescribed for sealed bid procurements shall be generally applicable to negotiated procurements.

(b) The clause set forth at 1952.210-70 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that the offered products meet fully the salient characteristics requirements of the solicitation.

(c) In small purchases within open-market limitations, such policies and procedures shall be applicable to the extent practicable.

1910.011 Solicitation provisions and contract clauses.

The Contracting Officer shall include the provision at 1952.210-70, Brand Name or Equal, in solicitations for which brand name or equal purchase is used.

PART 1912—CONTRACT DELIVERY OR PERFORMANCE

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13205, Apr. 3, 1985, unless otherwise noted.

Subpart 1912.70—Delays

1912.701 Delays.

The Contracting Officer shall insert the clause at 1952.212-70 in all USIA contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1913.1—General

Sec.
1913.106-70 Data to support small purchases over $1,000.
1913.107 Solicitation and evaluation of quotations.

Subpart 1913.2—Blanket Purchase Agreements

1913.201 General.
1913.203 Establishment of blanket purchase agreements (BPA's).
1913.203-1 General.

Subpart 1913.4—Imprest Fund

1913.404 Conditions for use.
1913.405 Procedures.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.
1913.505-2 Agency order forms in lieu of Optional and Standard Forms.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13205, Apr. 3, 1985, unless otherwise noted.

Subpart 1913.1—General

1913.106-70 Data to support small purchases over $1,000.

Form IA-21, Abstract of Quotations (see 1953.370-21) may be used to satisfy documentation requirements of FAR 13.106(c).

1913.107 Solicitation and evaluation of quotations.

(a) Standard Form 18, Request for Quotations, shall be used to obtain written quotations as prescribed in FAR 13.107(a) unless an equivalent form has been authorized for use by the Agency Procurement Executive. (See also FAR 53.103). Exceptions under this subpart shall be processed through the Agency Procurement Executive.

(b) Quotations on standard contractor quotation forms may be accepted when they provide sufficient information for fair and equal competitive evaluation.

Subpart 1913.2—Blanket Purchase Agreements

1913.201 General.

The Agency Procurement Executive may require that only contracting officers make purchases under a blanket purchase agreement.

1913.203 Establishment of blanket purchase agreements (BPA's).

1913.203-1 General.

Blanket purchase agreements shall be established and administered in accordance with Agency instructions.

Subpart 1913.4—Imprest Fund

1913.404 Conditions for use.

Imprest funds may be used for small purchases when the transaction does not exceed $150 ($300) under emergency conditions.

1913.405 Procedures.

(a) The individual making an approved purchase from the imprest fund shall be responsible for compliance with documentation requirements.

(b) The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.

1913.505-2 Agency order forms in lieu of Optional and Standard Forms.

(a) Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an equivalent form has been authorized for use by the Agency Procurement Executive (or Designee). Exceptions may be granted, on a case-by-case basis, in order to accommodate computer-generated purchase order forms. Exception approval for over printing (FAR 53.104) is not needed.

(b) USIA Form IA-44 (see 1953.370-44) is authorized for use when obtaining nonpersonal services on an intermittent basis for such services as script writers, translators, narrators, etc.

PART 1915—CONTRACTING BY NEGOTIATION

Subpart 1915.1—General Requirements for Negotiation

Sec.
1915.106 Contract clauses.
1915.106-70 Key personnel and facilities.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13205, Apr. 3, 1985, unless otherwise noted.

Subpart 1915.1—General Requirements for Negotiation

1915.106 Contract clauses.

1915.106-70 Key personnel and facilities.

Whenever contractor selection has been substantially predicated on the contractor's possession of special capabilities (i.e., personnel and/or facilities) the contracting officer shall include the clause at 1952.215-70 in the awarded contract.

PART 1917—SPECIAL CONTRACTING METHODS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13205, Apr. 3, 1985, unless otherwise noted.

Subpart 1917.1—Multiyear Contracting

1917.102 Policy.

When consistent with 22 U.S.C. 1472(b), the Head of the Agency may approve multiyear contracts up to five years.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1919.2—Policies

Sec.
1919.201 General policy.
1919.201-70 Director, Office of Small and Disadvantaged Business Utilization.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13205, Apr. 3, 1985, unless otherwise noted.

Subpart 1919.2—Policies

1919.201 General policy.

The Agency Procurement Executive shall also serve as the Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

1919.201-70 Director, Office of Small and Disadvantaged Business Utilization.

The Director, OSDBU, is responsible for the implementation and execution of the small, and small, disadvantaged business programs required by sections 8 and 15 of the Small Business Act, as amended, and provides guidance and advice, as appropriate, to agency program and contracts officials. The Director, OSDBU, is the central point of contact for general inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and from the Congress. The Director, OSDBU, shall represent the Agency in discussions with other Government agencies on small and small disadvantaged business matters.

PART 1922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1922.3—Contract Work Hours and Safety Standards Act

Sec.
1922.305 Contract clauses.

Subpart 1922.4—Labor Standards for Contracts Involving Construction

1922.470 Contract clauses.

Subpart 1922.70—Service Contract Act of 1965

1922.7001 Clause for contracts over $2,500.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13205, Apr. 3, 1985, unless otherwise noted.

Subpart 1922.3—Contract Work Hours and Safety Standards Act

1922.305 Contract clauses.

The Contracting Officer shall insert the clauses at 1952.222-82 and 1952.222-83 in lieu of the clause at FAR 52.222-4 until such time as the latter is updated to reflect the requirements of DOL Regulations, 29 CFR 5.5(c), implemented by FPR Temp. Reg. 70, dated June 28, 1983, 48 FR 31028 July 6, 1983.

Subpart 1922.4—Labor Standards for Contracts Involving Construction

1922.470 Contract clauses.

(a) Except as required by 1922.470(b), every construction contract in excess of $2,000 (or of such other amount as may be specificallly indicated) for work within the United States shall include the following clauses:

Davis-Bacon Act (40 U.S.C. 276a-276a-7) clause of 1952.222-70.

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333) clause at 1952.222-71.

Apprentices and Trainees clause at 1952.222-72.

Payrolls and Basic Records clause at 1952.222-73.

Compliance with Copeland Act Requirements clause at 1952.222-74.

Withholding clause at 1952.222-75.

Subcontracts clause at 1952.222-76.

Contract Termination; Debarment clause at 1952.222-77.

Disputes Concerning Labor Standards clause at 1952.222-78.

Compliance with Davis-Bacon and Related Act Requirements clause at 1952.222-79.

Certification of Eligibility clause at 1952.222-80.

(b) Every construction contract in excess of $2,000 for work outside the United States, but which is nevertheless subject to the Contract Work Hours and Safety Standards Act as set forth in FAR subpart 22.3, shall include the Work Hours and Safety Standards Act Overtime Compensation clause at 1952.222-71.

Subpart 1922.70—Service Contract Act of 1965

1922.7001 Clause for contracts over $2,500.

The Contracting Officer shall insert in full text the clause at 1952.222-81, Service Contract Act of 1965, As Amended, in solicitations and contracts, in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1927—PATENTS, DATA, AND COPYRIGHTS

Subpart 1927.4—Rights in Data and Copyrights

Sec.

1927.400 Scope of subpart.
1927.401 Definitions.
1927.402 Policy.
1927.403 Procedures.
1927.404 Acquisition of data.
1927.405 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13206, Apr. 3, 1985, unless otherwise noted.

Subpart 1927.4—Rights in Data and Copyrights

1927.400 Scope of subpart.

This subpart sets forth policies, procedures, and instructions with respect to (a) rights in data and copyrights and (b) requirements for data.

1927.401 Definitions.

Computer Software, as used in this subpart, means computer programs, computer data bases, and documentation thereof.

Data, as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or any financial, business and management information required for contract administration purposes.

Form, fit, and function data, as used in this subpart, means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

Limited-rights, as used in this subpart, means the rights of Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.

Limited-rights data, as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof. (Agencies may, however, adopt the following alternate definition: *Limited-rights data,* as used in this subpart, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.)

Restricted computer software, as used in this subpart, means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software.

Restricted rights, as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

Technical data, as used in this subpart, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software of financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

Unlimited rights, as used in this subpart, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

1927.402 Policy.

(a) It is necessary for the U.S. Information Agency in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of USIA activities; insure appropriate utilization of the results of research, development, and demonstration activities; and meet other programmatic and statutory requirements. At the same time, the Government recognizes that its contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commercial position, and maintain the Government's ability to obtain access to our use of such data.

(b) The protection of this data by the Government is necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the above considerations to strike a balance between the Government's needs and the contractor's property rights and economic interests.

1927.403 Procedures.

(a) *General.* All contracts that require data to be produced, furnished, or acquired must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from sealed bidding that require only existing data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1952.227-70, Rights in Data—General, where determined appropriate by the Agency as discussed in paragraph (b), below, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other clauses or no clause at all, as discussed in paragraphs (c), (d), (e), and (f) below.

(b) *Basic Rights in Data*—(1) *Summary.* The clause at 1952.227-70, Rights in Data—General, is structured to strike a balance between USIA's needs in carrying out its missions and programs and the contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the contractor to protect from unauthorized use and disclosure data that qualifies as limited-rights data or restricted computer software (see paragraph (b)(2) below for an alternate definition of limited-rights data). This clause also specifically delineates the categories or types of data that USIA is to acquire with unlimited rights (see paragraph (b)(3) below). The contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to USIA, or when USIA has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (b) (4) and (5) below.) In addition, this clause enables contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain license rights in the Government. (See paragraph (b)(6) below.) This clause also includes procedures that apply when the Government questions whether notices on data are authorized (see paragraph (b)(7) of this section) or when a contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (b)(8) below); addresses the contractor's right to release, publish or use certain data involved in contract performance (see paragraph (b)(9) of this section); and provides for the possibility for the Government to inspect certain data at the contractor's facility (see paragraph (b)(10) of this section).

(2) *Alternate definition of limited-rights data.* In the clause at 1952.227-70, Rights in Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate, the contracting officer may determine to adopt in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, the alternate definition may be used where the principal purpose of a contract does not involve the development, use or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts, socioeconomic reports, educational material, health and safety information, management analysis, and related matters.

(3) *Unlimited-rights data.* Under the clause at 1952.227-70, Rights in Data—General, the Government acquires unlimited rights in the following data except as provided in paragraph (b)(6) below for copyrighted data: (i) Data first produced in the performance of a contract; (ii) form, fit, and function data delivered under contract; (iii) data (except as may be included with restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair delivered under a contract; and (iv) all other data delivered under the contract unless such data qualifies as limited-rights data or restricted computer software. If any of the foregoing data is published copyrighted data, the Government acquires it under a copyright license as set forth in paragraph (b)(6) below rather than with limited rights or restricted rights.

(4) *Protection of limited-rights data.* (i) The contractor may protect data (other than unlimited rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1952.227-70, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if and USIA specifies the delivery of the data, by delivering such data with limitations on its use and disclosure. These two modes of protection afforded the contractor (i.e., withhold, or deliver with limited rights) are provided for in paragraph (g) of the clause at 1952.227-70, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold limited-rights data and provide form, fit, and function data in lieu thereof. Alternate II adds subparagraph (g)(2) to this clause to enable USIA selectively to obtain the delivery withheld or withholdable data with limited rights. The limitations on the Governments rights to use and disclose limited-rights data when the clause is used are set forth in a "Limited Rights Notice" that the contractor is required to affix to such data. The specific limitations in the Notice are described below.

(ii) Limited-rights data delivered to the Government with the Limited Rights Notice contained in subparagraph (g)(2) will not, without permission of the contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited purposes as may be set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes which may be selected by an agency and added to the Limited Rights Notice of subparagraph (g)(2) of the clause:

(A) Use by support service contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use by other contractors participating in the USIA program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair of overhaul work by such Government.

(iii) As an aid in determining whether the clause should be used with its Alternate II, the provision at 1952.227.71, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1952.227-70, Rights in Data—General. In addition, the need for Alternate II should be considered during the negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1952.227-70, Rights in Data—General, without Alternate II does not preclude this Alternate from being used subsequently by amendment during contract performance should the need arise for delivery of limited-rights data that has been withheld or identified as withholdable.

(5) *Protection of restricted computer software.* (i) If computer software qualifies as restricted computer software, the clause at 1952.227-70, Rights in Data—General, permits the contractor to protect such software by either withholding it from delivery and providing form, fit, and function data in lieu thereof; or if USIA specifies delivery of the software, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The two modes of protection afforded the contractor (i.e. withhold or deliver with restricted rights) are provided for in paragraph (g) of the clause at 1952.227-70, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold restricted computer software and provide form, fit, and function data in lieu thereof. Alternate III adds subparagraph (g)(3) to this clause to enable the Government selectively to obtain delivery of the withheld or withholdable computer software with restricted rights. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software when the clause is used with its Alternate III are set forth in a "Restricted Rights Notice" that the contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published copyrighted computer software, it is acquired with a restricted copyright license, without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth below.

(ii) Restricted computer software delivered with the Restricted Rights Notice of subparagraph (g)(3) will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be:

(A) Used, or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(B) Used, or copied for use in or with a backup computer if the computer or computers for which it is acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights; and

(E) Disclosed and reproduced by support contractors or their subcontractors, subject to the same restrictions under which USIA acquired the software.

(iii) The restricted rights set forth in 1927.403(b)(5)(ii) of this part are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of subparagraph (g)(3) of the clause. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be specified in the contract. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the contracting officer, in a collateral agreement incorporated in and made part of the contract. (See paragraph (d)(2) below.)

(iv) As an aid in determining whether the clause should be used with its Alternate III, the provision at 1952.227-71, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1952.227-70, Rights in Data—General. In addition, the need for Alternate III should be considered during negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1952.227-70, Rights in Data—General, without Alternate III does not preclude this Alternate from being used subsequently by amendment during contract performance, should the need arise for the delivery of restricted computer software that has been withheld or identified as withholdable.

(6) *Copyrighted data.* (i) *Data first produced in the performance of a contract.* (A) In order to enhance the transfer or dissemination of information produced at Government expense, contractors may be permitted to establish claim to copyright subsisting in data first produced in the performance of work under a contract containing the clause at 1952.227-70, Rights in Data—General. This right is granted in subparagraph (c)(1) of the clause for any data first produced under the contract. USIA may, however, specifically exclude items or categories of data from the right of the contractor to establish claim to copyright when appropriate; for example, where the data is to be disseminated in useful form by the Government. Also, agencies having programs for the transfer or dissemination of information resulting from its programs may, by use of the clause, include a substitute subparagraph (c)(1) in the clause to limit the right of the contractor granted in subparagraph (c)(1) to establish claim of copyright to scientific and technical articles based on or derived from work performed under the contract and published in academic, professional, or technical journals. However, permission may be granted to establish claim to copyright in all other data in accordance with the procedures set forth below.

(B) Usually permission for a contractor to establish claim to copyright for data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. The request normally will be granted unless:

(*1*) The data consists of a report that represents the official views of USIA or that USIA is required by statute to prepare;

(*2*) The data is intented primarily for internal use by the Government;

(*3*) The data is of the type that USIA itself distributes to the public under an established program; or

(*4*) USIA determines that limitation on distribution of the data is in the national interest.

(C) Whenever a contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in subparagraph (c)(1) of the clause at 1952.277-70, Rights in Data—General. However, USIA may on a case-by-case basis or on a class basis obtain on equitable terms a license of lesser scope than set forth in subparagraph (c)(1) of the clause if USIA determines that such lesser license will substantially enhance the transfer or dissemination of any data first produced under the contract.

(ii) *Data not first produced in the performance of a contract.* (A) Contractors are not to incorporate in data delivered under contract any data not first produced under the contract with the copyright notice of 17 U.S.C. 401 or 402 without either: Acquiring for, or granting to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data; or obtaining permission from the contracting officer to do otherwise. However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in subparagraph (g)(3) if included in the clause at 1952.277-70, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(B) Contractors delivering data with an authorized limited rights or restricted rights notice and a copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the contractor may be afforded opportunity to correct it in accordance with 1927.403(b)(8). Otherwise, data delivered with a copyright notice 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable rights set forth in (b)(6)(i)(A) above, without disclosure limitations or restrictions.

(C) If contractor action causes limited rights or restricted rights data to be published with copyright notice after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the contractor should advise the Government and request that a copyright notice be placed on the data, and acknowledge the applicable copyright license.

(7) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1952.227-70, Rights in Data—General, the right either to return to the contractor data containing markings not authorized by that clause or to cancel or ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the contractor and affording the contractor at least 30 days to substantiate the propriety of the markings. The contracting officer will also give the contractor notice of any determination made based on any response by the contractor. Any such determination to cancel or ignore the markings shall be a final decision under the Contract Disputes Act. Failure of the contractor to respond to the contracting officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings. The above procedures may be modified in accordance with USIA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(8) *Omitted or incorrect notices.* (i) Data delivered under a contract containing the clause at 1952.227-70, Rights in Data—General, without a limited-rights notice or restricted rights notice, or without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may within six months (or a longer period approved by the contracting officer for good cause shown) request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on quali-

fying data at the contractor's expense, and the contracting officer may agree to so permit if the contractor—

(A) Identifies the data for which a notice is to be added or corrected;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from omission of the notice.

(ii) The contracting officer may also (A) permit correction at the contractor's expense of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (B) correct any incorrect notices.

(9) *Release, publication and use of data.* (i) In the clause at 1952.227-70, Rights in Data—General, paragraph (d) provides that contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced or specifically used by the contractor in the performance of a contract; however, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract and the data contains restrictive markings, the contractor agrees to treat the data in accordance with such markings, unless otherwise specifically authorized in writing by the contracting officer.

(ii) USIA may, on a case-by-case basis, or on a class basis, place further limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute or publish any data first produced (but not data specifically used) in the performance of the contract. Such restrictions are not to be imposed on a class basis unless they are pursuant to statutory requirements, determined to be necessary in the furtherance of USIA mission objectives, or determined to be necessary in support of specific USIA programs.

(10) *Inspection of data at the contractor's facility.* USIA may obtain the right to inspect data at the contractor's facility by use of paragraph (j) of the clause to provide that right in the clause at 1952.227-70, Rights in Data—General. The data subject to inspection may be data withheld or withholdable under subparagraph (g)(1) of the clause, or any data specifically used in the performance of the contract. Such inspection may be made by the contracting officer or representative for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised at all reasonable times up to three years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(c) *Production of special works.* [Reserved]

(d) *Acquisition of existing data other than limited-rights data.* [Reserved]

(e) *Specific Acquisition of Unlimited Rights in Technical Data.* (1) Notwithstanding any other provision of this subsection the Government may acquire unlimited rights in any limited rights technical data by means of negotiation with an individual contractor or subcontractor, or as a part of a competition among several contractors or subcontractors. Such individual negotiation or competition may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Such unlimited rights in technical data shall be stated in the contract schedule as a separate item and shall be separately priced. Unlimited rights in technical data shall not be acquired under this paragraph unless it is determined after a finding upon a documented record that—

(i) There is a clear need for reprocurement of the item, component, or process to which the technical data pertains;

(ii) There is no suitable item, component or process of alternate design or availability;

(iii) The item or component can be manufactured or the process performed through the use of such technical data by other competent manufacturers, without the need for additional technical data which cannot be purchased reasonably or is not readily obtained by other economic means; and

(iv) Anticipated net savings in reprocurements will exceed the acquisition cost of the technical data and rights therein.

(2) The analysis and findings referred to in paragraph (b)(1) above shall specifically identify each item, component or process and the particular technical data therefor which is to be purchased.

(3) When all technical data is to be acquired under any contract with unlimited rights in accordance with the findings of paragraph (f)(1) of this section, the clause at 1952.227-75, Rights in Technical Data—Specific Acquisition, shall be used.

(f) *Architect-engineer and construction contracts*—(1) *General.* This section sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and designs unique to the acquisition of construction and architect-engineer services.

(2) *Acquisition and use of plans, specifications, and drawings*—(i) *Plans and specifications and as-built drawings.* Insert the clause at 1952.227-76 Government Rights (Unlimited), in solicitations and contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(ii) *Shop drawings for construction.* In acquiring shop drawings for construction, the Government shall obtain the unlimited rights to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in solicitations and contracts calling for delivery of such drawings, insert the clause at 1952.227-77, Rights in Shop Drawings.

(3) *Contracts for construction supplies and research and development work.* The solicitation provisions and contract clauses in Subpart 1927.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitation and contracts for the acquisition of other than construction or architect-engineer services are applicable when the acquisition is limited to either (i) construction supplies or materials as such, as distinguished from construction as defined in FAR 36.102; (ii) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (iii) both. The right of the Government and others to use, duplicate, or disclose such data or computer software will be determined by the terminology of the applicable clauses in the contracts or the terminology of agreements recited-in or made part of the contracts.

(4) *Mixed contracts.* When solicitations and resulting contracts call for (i) supplies or materials, (ii) experimental, developmental or research work, or (iii) both, in addition to either construction or architect-engineer work, the solicitation provisions and contract clauses in subpart 1927.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitations and contracts for the acquisition of other than construction or architect-engineer services shall be included in such solicitations and resultant contracts in addition to the appropriate solicitation provisions and contract clauses prescribed for use in solicitation and contracts for construction or architect-enginner services. In such cases, the solicitations and resulting contracts shall clearly indicate which of the solicitation provisions and contract clauses apply only to the supplies or materials being acquired, or to experimental, developmental, or research work, or to both, and which of the solicitation provisions and contract clauses apply only to the construction or architect-engineer work.

1927.404 Acquisition of data.

(a) *General.* (1) It is important to recognize and maintain the conceptual distinction between contract terms whose purpose is to identify the data required for delivery to, or made available to, the Government (i.e., data requirements) and those contract terms whose purpose is to define the respective rights of the Government and the contractor in such data (i.e., data rights). This section relates to data requirements; 1927.403 relates to the data rights.

(2) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restriction to be imposed on the contractor in the handling of the data, shall be specified in the contract.

(b) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 1952.227-72, Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under the clause at any time during contract performance or within a period of three years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer at any time during the retention period required by the clause. Any data ordered under the clause will be subject to the Rights in Data—General clause in the contract and data authorized to be withheld under that clause will not be required to be delivered under this Additional Data Requirements clause.

1927.405 Solicitation provisions and contracts clauses.

(a) *Rights in Data—General.* (1) The contracting officer shall insert the clause at 1952.227-70, Rights in Data—General, (see 1927.403(b)) in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, except that such clause shall not be used in solicitations and contracts—

(i) For the production of special works. [Reserved]

(ii) For the separate acquisition of existing works. [Reserved]

(iii) When all technical data to be delivered is to be acquired with unlimited rights pursuant to the policy at 1927.403(e) in which case the clause at 1952.227-75, Rights in Technical Data—Specific Acquisition shall be used;

(iv) When performance will be limited solely to architect-engineer services or construction pursuant to the policy at 1927.403(f), in which case the clause at 1952.227-76, Government Rights (Unlimited) applies;

(v) To be performed outside the United States, its possessions, and Puerto Rico, in which case the contracting officer may prescribe different clauses (see paragraph (k) of this section).

(2) If the contracting officer determines, in accordance with 1927.403(b)(2), to adopt the alternate definition of "Limited Rights Data" in paragraph (a) of the clause, the clause shall be used with its Alternate I.

(3) If USIA needs to obtain the delivery of limited-rights data the clause shall be used with its Alternate II (see 1927.403(b)(4)). The contracting officer shall assure that the purposes, if any, for which limited-rights data is to be disclosed outside the Government are included in the "Limited Rights Notice" of paragraph (g)(2) of the clause in accordance with 1927.403(b(4). The contract may ex-

clude identified items of data from delivery under paragraph (g)(2) of the clause. Alternate II may be used at the time of contracting or subsequently by amendment if the need to acquire limited-rights data arises during contract performance.

(4) If USIA needs to obtain the delivery of restricted computer software, the clause shall be used with its Alternate III (see 1927.403(b)(5).) Any greater or lesser rights regarding the use, duplication, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of paragraph (g)(3) of the clause must be specified in the contract. Alternate III may be used at the time of contracting or subsequently by amendment if the need to acquire restricted computer software arises during contract performance.

(5) If USIA wishes to limit the automatic right of the contractor to establish claim to copyright subsisting in data first produced in the performance of the contract to scientific and technical articles based on or derived from the work performed under the contract and published in academic, technical, or professional journals, the clause shall be used with its Alternate IV. (See 1927.403(b)(6).) Alternate IV provides a substitute subparagraph (c)(1) in the clause with such limitation. This subparagraph (c)(1) does, however, allow the contracting officer to give permission to the contractor to establish claim to copyright subsisting in other data first produced in the performance of the contract, either at the time of contracting or subsequently during contract performance, in accordance with 1927.403(b)(6).

(6) If USIA needs to have the right to inspect certain data at a contractor's facility, the clause shall be used with its Alternate V. (See 1927.403(b)(10).) Alternate V adds a paragraph (j) to the clause to provide for such right, including the limitations thereon. Inspection may be by the contracting officer or representative, and may be made at all reasonable times up to 3 years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not to be subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(b) If USIA desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited-rights data or restricted computer software is likely to be used in meeting the data requirements set forth in the solicitation, the contracting officer shall insert the provision at 1952.227-71, Notification of Limited-Rights Data and Restricted Computer Software, in any solicitation containing the clause at 1952.227-70, Rights in Data—General. The contractor's response will provide an aid in determining whether the clause should be used with Alternate II and/or Alternate III. (See 1927.403(b) (4) and (5).)

(c) The contracting officer shall insert the clause at 1952.227-72, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. (See 1927.404.) This clause may also be used in other contracts when considered appropriate. If the clause at 1952.227-70, Rights in Data—General, is used in the contract with its Alternates II or III, the contracting officer may permit the contractor to identify data the contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under paragraph (g)(2) or (g)(3) of that clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used".

(d) Special Works. [Reserved]

(e) Existing Works. [Reserved]

(f) The contracting officer shall insert the clause at 1952.227-75, Rights in Technical Data—Specific Acquisition, in solicitations and contracts when all technical data is to be acquired with unlimited rights in accordance with 1927.403(e) (1), (2), and (3). The clause shall also be included in subcontracts when the Government has determined to acquire all technical data with unlimited rights from a subcontractor in accordance with the authority and findings of 1927.403-2(e) (1), (2), and (3). The clause shall not be used under any other circumstances.

(g) The contracting officer shall insert the clause at 1952.227-76, Government Rights (Unlimited) in solicitations and contracts in accordance with 1927.403(f)(2)(i).

(h) The contracting officer shall insert the clause at 1952.227-77, Rights in Shop Drawings, in solicitations and contracts in accordance with 1927.403(f)(2)(ii).

(i) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1927.403(d)(2).

(j) While no specific clause of this subpart need be included in contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items) (see 1927.403(d)(3)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1927.403(d)(3).)

(k) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of section 1927.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(l) The Contracting Officer shall insert the clause at 1952.227-78, Disposition of Prints and Videotape Recordings in License Agreements which limit the period for distribution and exhibition of video-tape programs and films.

PART 1932—CONTRACT FINANCING

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13212, Apr. 3, 1985, unless otherwise noted.

Subpart 1932.1—General

1932.111 Contract clauses.

(a) The contracting officer shall insert one of the clauses at 1952.232-70 and 1952.232-71, Payment Due Date, in solicitations and contracts. The contracting officer shall select the clause that is applicable to the type of supplies or services being procured.

(b) The contracting officer shall insert the clauses 1952.232-72, Interest on Overdue Payments, in solicitations and contracts.

(c) The contracting officer shall insert the clause at 1952.232-73, Invoice Requirements, in solicitations and contracts for supplies or services which require the submission of invoices.

(d) The contracting officer shall insert the clause at 1952.232-74, Method of Payment, in all solicitations and contracts, except those which are subject to simplified small purchase procedures.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1942—CONTRACT ADMINISTRATION

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13212, Apr. 3, 1985, unless otherwise noted.

Subpart 1942.2—Assignment of Contract Administration

1942.202-70 Authorized Representative of the Contracting Officer (AR/CO).

The Contracting Officer may designate an appropriately qualified Government employee to act as the Authorized Representative of the Contracting Officer (AR/CO). Such designation shall apply to a single contract, must be in writing, and shall define the scope and limitations of the AR/CO's authority. The instrument designating an AR/CO shall not contain authority to sign or agree to any contract or major modification to a contract. Contractual commitments shall be made only by a duly certified contracting officer. The Contracting Officer shall insert the clause at 1952.242-70, Authorized Representative of the Contracting Officer, in solicitations and contracts when an individual is to be selected and designated by the Contracting Officer to perform administration of a given contract(s).

PART 1946—QUALITY ASSURANCE

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13212, Apr. 3, 1985, unless otherwise noted.

Subpart 1946.7—Warranties

1946.704 Authority for use of warranties.

(a) The procurement request initiator is responsible for preparing a written recommendation for those purchases deemed to be appropriate for application of warranty provisions. The recommendation shall state why a warranty is appropriate by specifically addressing the criteria set forth in FAR 46.703. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems, or contract line items to which a warranty should apply.

(b) Prior to solicitation of the requirement, the contracting officer shall make a written determination when a warranty provision is to be included.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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1952.227-70 Rights in data—General.
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1952.227-75 Rights in technical data—Specific acquisition.
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1952.227-77 Rights in shop drawings.
1952.227-78 Disposition of prints and videotape recordings.
1952.232-70 Payment due date—F.O.B. Destination or F.A.S. Vessel.
Sec.
1952.232-71 Payment due date—F.O.B. Origin.
1952.232-72 Interest on overdue payments.
1952.232-73 Invoice requirements.
1952.232-74 Method of payment.
1952.242-70 Authorized Representative of the Contracting Officer.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13212, Apr. 3, 1985, unless otherwise noted.

1952.000 Scope of part.

This part implements and supplements FAR part 52 which sets forth solicitation provisions and contract clauses for use in the acquisition of personal property and nonpersonal services (including construction).

Subpart 1952.1—Instructions for Using Provisions and Clauses

1952.102-2 Incorporation in full text.

All IAAR provisions and clauses shall be incorporated in solicitations and/or contracts in full text.

1952.104 Procedures for modifying and completing provisions and clauses.

IAAR provisions and clauses shall not be modified (see FAR 1952.101(a) unless authorized by the Director, Office of Contracts, and when so authorized, contracting officers must comply with the procedures in FAR 1952.104.

Subpart 1952.2—Texts of Provisions and Clauses

1952.200 Scope of subpart.

This subpart sets forth the full text of all IAAR provisions and clauses.

1952.210-70 Brand name or equal.

As prescribed in 1910.011 insert the following provision when a "brand name or equal" purchase description is used in the solicitation:

BRAND NAME OR EQUAL (FEB 1985)

(As used in this provision the term "brand name" includes identification of products by make and model.)

A. If items called for by this solicitation have been identified in this schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Solicitations offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offer and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

B. Unless the offeror clearly indicates in the offer that an "equal" product is being offered, the offer shall be considered as offering a brand name product referenced in the solicitation.

C. 1. If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in the offer as well as other information reasonably available to the contracting activity. CAUTION TO OFFERORS. The contracting activity is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting activity. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of the offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting activity.

2. If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the offer a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

3. Modifications proposed after date for receipt of offers to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of clause)

1952.212-70 Notice of delay.

As prescribed at 1912.70, insert the following clause in all contracts:

NOTICE OF DELAY (FEB 1985)

If the Contractor becomes unable to complete the contract work at the time(s) specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of clause)

1952.215-70 Key personnel and facilities.

As prescribed in 1915.106-70 insert the following clause in appropriate contracts:

KEY PERSONNEL AND FACILITIES (FEB 1985)

The personnel and/or facilities listed below (or as specified in the Schedule of this contract) are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; provided, that the Contracting Officer may ratify in writing the change and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of clause)

1952.222-70 Davis-Bacon Act (40 U.S.C. 276a-276a-7).

As prescribed in 1922.403(a) the contracting officer shall insert the following clauses:

DAVIS-BACON ACT (40 U.S.C. 276a-276a-7)
(FEB 1985)

(a) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all time by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bond fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator of the Wage and Hour Division, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator of the Wage and Hour Division, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraph (b)(2) or (b)(3) of this clause, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. *Provided*, That the Secretary of Labor has found, upon written request of the Contractor, that applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(e) Paragraphs (a) through (d) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(End of clause)

1952.222-71 Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333).

As prescribed at 1922.403(a), the contracting officer shall insert the following clause:

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333) (Feb 1985)

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor of subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

1952.222-72 Apprentices and trainees.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Apprentices and Trainees (Feb 1985)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship

Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination of the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(End of clause)

1952.222-73 Payrolls and basic records.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

PAYROLLS AND BASIC RECORDS (FEB 1985)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of

Labor has found under paragraph (d) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents, Government Printing Office. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "Payrolls and Basic Records" and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deduction have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

1952.222-74 Compliance with Copeland Act Requirement.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

COMPLIANCE WITH COPELAND ACT REQUIREMENT (FEB 1985)

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(End of clause)

1952.222-75 Withholding.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

WITHHOLDING (FEB 1985)

The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentices, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Prime Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

1952.222-76 Subcontracts.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

SUBCONTRACTS (FEB 1985)

The Contractor or subcontractor shall insert in any subcontracts the clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination-Debarment," "Disputes Concerning Labor Standards," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," and such other clauses as the Contracting Officer may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited above.

(End of clause)

1952.222-77 Contract termination; debarment.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

CONTRACT TERMINATION; DEBARMENT (FEB 1985)

A breach of the contract clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts," "Compliance With Davis Bacon and Related Act Requirements," and "Certification of Eligibility," may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(End of clause)

1952.222-78 Disputes concerning labor standards.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

DISPUTES CONCERNING LABOR STANDARDS (FEB 1985)

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

1952.222-79 Compliance with Davis-Bacon and Related Act Requirements.

As prescribed in 1922.403(a), the contracting officer shall insert the following clauses:

COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS (FEB 1985)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(End of clause)

1952.222-80 Certification of eligibility.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

CERTIFICATION OF ELIGIBILITY (FEB 1985)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person of firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

1952.222-81 Service Contract Act of 1965.

As prescribed in 1922.1006 insert the following clause:

SERVICE CONTRACT ACT OF 1965, AS AMENDED (FEB 1985)

(a) This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 *et seq.*) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section.

(The information collection requirements contained in the following paragraphs of this section have been approved by the Office of Management and Budget under OMB control number 1215-0150)

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative of the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraphs (b)(2)(i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in subpart D of 29 CFR part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR part 4 apply or unless the Secretary of Labor or his authorized representative finds, after hearing as provided in 4.10 of 29 CFR part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issu-

ance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under control number 1215-0150)

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with safety and health standards applied under 29 CFR part 1925.

(g)(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Sections 4.6(g)(1) (i) through (iv) approved by the Office of Management and Budget under control number 1215-0017 and sections 4.6(g)(1) (v) and (vi) approved under control number 1215-0150)

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to 4.6(l)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semimonthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime contractor."

(k)(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent provision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for *informational purposes only:*

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and Budget under control number 1215-0150)

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (section 4.173 of Regulations, 29 CFR part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under control number 1215-0150)

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise re-

quired by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in parts 525 and 528 of title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR part 531: *Provided, however,* That the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act Minimum wage through the combination of direct wages and tip credit; (Approved by the Office of Management and Budget under control number 1215-0017)

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(r) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be revolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 4, 6 and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

1952.222-82 Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327-333) (Nonconstruction only).

As prescribed in 1922.305 insert the following clause:

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OVERTIME COMPENSATION (40 U.S.C. 327-333) (FEB 1985)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for uppaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen, and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

1952.222-83 Payrolls and basic records (Nonconstruction only).

As prescribed in 1922.305 insert the following clause:

PAYROLLS AND BASIC RECORDS (FEB 1985)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, and transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors will permit such representatives to interview employees during working hours on the job.

(End of clause)

1952.227-70 Rights in data—General.

(a) As prescribed in 1927.405(a)(1) insert the following clause:

(a) *Definitions:*

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term shall be construed broadly; it includes all writings within the scope of Article 1, Section 8, Clause 8 of the United States Constitution, as well as all works subject to copyright under title 17, United States Code. The term does not include information incidental to contract administration, such as contract cost analysis or financial, business, and management information required for contract administration purposes.

Computer software, as used in this clause, means computer programs, computer data bases, and documentation thereof.

Form, fit, and function data, as used in this clause, means data describing, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

Limited-rights data, as used in this clause, means data that embodies trade secrets or is commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processes developed at private expense, including minor modifications thereof.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret, is commercial or financial data which is confidential or privileged, or is published copyrighted computer software.

Unlimited rights, as used in this clause, means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

Limited rights, as used in this clause, means the rights of the Government in limited-rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in a this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair, and

(iv) All other data delivered under this contract unless otherwise provided for limited-rights data or restricted computer software in accordance with paragraph (g) below.

(2) The contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract unless provided otherwise in paragraph (d) below;

(ii) Protect form unauthorized disclosure and use that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) below;

(iii) Substantiate use of, add, or correct limited rights or restricted rights notices, and to take other appropriate action, in accordance with paragraphs (e) and (f) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) below.

(c) *Copyright.* (1) Data first produced in the performance of this contract. Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) Data not first produced in the performance of this contract. The contractor shall not, without prior written permission of the contracting officer, incorporate into data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402 unless the contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; provided, however, that if such data is computer software, the Government shall acquire a copyright license as set forth in subparagraph (g)(3) below if included in this contract, or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, except as may be provided otherwise below in this paragraph.

(2) The contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in subparagraph (g)(2) or (g)(3) below and use of such is not authorized by this clause, the contracting officer may either return the data to the contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The contracting officer makes written inquiry to the contractor concerning the propriety of the markings, providing the contractor 30 days to respond; and

(ii) The contractor fails to respond within the 30 day period (or such longer time approved by the contracting officer for good cause shown), or the contractor's response fails to substantiate the propriety of the markings.

(2) The contracting officer shall consider the contractor's response, if any, and determine whether the markings shall be cancelled or ignored. The contracting officer shall furnish written notice to the contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The above procedures may be modified in accordance with regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (g) below, or without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may request, within six months (or such longer time approved by the contracting officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the contractor's expense, and the contracting officer may agree to do so if the contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also (i) permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in subdivisions (b)(2)(i), (ii), and (iii) above, is specified to be delivered under this contract and qualifies as either limited-rights data or restricted computer software, the contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding the contractor shall identify the data being withheld and furnish form, fit and function data in lieu thereof. Limited-rights data that is formatted as a computer data base for delivery to the Government is to be treated as limited-rights data and not restricted computer software.

(2)-(3) [Reserved]

(h) *Subcontracting.* The contractor has the responsibility to obtain from its subcontractors all data and right therein necessary to fulfill the contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the contractor shall promptly bring such refusal to the attention the contracting officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(b) *Alternate I.* As prescribed in 1927.405(a)(2) substitute the following definition for *Limited Rights Data in paragraph (a) of the clause:*

Limited-rights data, as used in this clause, means data produced at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

(c) *Alternate II.* As prescribed in 1927.405(a)(3) insert the following subparagraph (g)(2) in the clause:

(g)(2) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of limited-rights data, or the contracting officer may require by written request the delivery of limited-rights data that has been withheld or would otherwise by withholdable. If delivery of such data is so required, the contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) above, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) This data is submitted with limited rights under Government contract No —— (subcontract ——, if appropriate). It may be reproduced and used by the Government with the express limitation that it will not, without permission of the contractor, be used for purposes of manufacture or disclosed outside the Government; except that the Government may disclose this data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(The contracting officer may list additional purposes as set forth in 1927.403(b)(4).)

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

(d) *Alternate III.* As prescribed in 1927.405 (a)(4) insert the following subparagraph (g)(3) in the clause:

(g)(3) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of restricted computer software, or the contracting officer may require by written request the delivery of restricted computer software that has been withheld. If delivery of such computer software is so required, the contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Contract No. ——— (and subcontract ——— if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support contractors or their subcontractors in accordance with subparagraphs (1) through (4) above, provided the Government makes such disclosure subject to these restricted rights.

(d) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE (SHORT FORM)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. ——— (and subcontract ——— if appropriate) with ——— (name of contractor and subcontractor).

(End of notice)

(e) *Alternate IV.* As prescribed in 1927.405(a)(5) substitute the following subparagraph (c)(1) in the clause:

(c)(1) Data first produced in the performance of this contract. Unless provided otherwise in subparagraph (d) below, the contractor may establish claim to copyright subsisting in scientific and technical, or professional journals. The prior, express written permission of the contracting officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract in accordance with USIA Acquisition Regulation 1927.403(b)(8). When claim, to copyright is made, the contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(f) *Alternate V.* as prescribed in 1927.405(a)(6), add the following paragraph (j) to the clause:

(j) The contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the contracting officer or an authorized representative may, at all reasonable times up to three years after acceptance of all items to be delivered under this contract, inspect at the contractor's facility any data withheld under subparagraph (g)(1) of this clause, or any data specifically used in the performance or verifying the contractor's assertion pertaining to the limited rights or restricted rights status of the data. Where the contractor whose data is to be inspected demonstrates to the contracting officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the contracting officer shall designate an alternate inspector.

(End of clause)

1952.227-71 Notification of limited-rights data and restricted computer software.

As prescribed in 1927.405(b) insert the following provision in solicitations that include the clause at 1952.227-70, Rights in Data—General:

NOTIFICATION OF LIMITED-RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE (FEB 1985)

(a) This solicitation sets forth the work to be performed and the Government's known requirements for data (as defined in USIA Acquistion Regulation, 1927.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause (USIA Acquisition Regulation 1952.227-73) if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause (USIA Acquisition Regulation 1952.227-71) that is to be included in this contract. Under this clause, a contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and delivered form, fit, and function data in lieu thereof. This clause also may be used with Alternates II and/or III to obtain delivery of limited-rights data or restricted computer software with limited rights or restricted rights. In addition, use of alternate V with this clause provides the Government with the right to inspect such data at the contractor's facility.

(b) As an aid in determining the Government's need to include any of the above Alternates in the clause at 1952.227-70, Rights in Data—General, the offeror's response to this solicitation shall, to the extent feasible, either state that none of the data qualifies as limited-rights data or restricted computer software, or identify which of the data qualifies as limited-rights data or restricted computer software. Any identification of limited-rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

1952.227-72 Additional data requirements.

As prescribed in 1927.405(c), insert the following clause in solicitations and contracts involving experimental, developmental or research work, except those awards using small purchase procedures. This clause may be used in solicitations and contracts for other types of work after consultation with legal counsel:

ADDITIONAL DATA REQUIREMENT (FEB 1985)

(a) In addition to the data (as defined in the Rights in Data—General clause included in this contract) specified elsewhere in this contract to be delivered, the contracting officer may at any time during contract performance or within a period of three years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the contractor to deliver any data: (1) The withholding of which is authorized by the Rights in Data—General clause of this contract; or (2) which is specifically identified in this contract as not subject to this clause.

(c) When data is to be delivered under this clause, the contractor will be compensated for: (1) Converting the data into the prescribed form, (2) reproduction; and (3) delivery.

(d) The contracting officer may release the contractor from the requirements of this clause for specifically indentified data items at any time during the three-year period set forth in (a) above.

1952.227-73 Rights in data—Special works. [Reserved]

1952.227-74 Rights in data—Existing works. [Reserved]

1952.227-75 Rights in technical data—Specific acquisition.

As prescribed in 1927.405(f), insert the following clause:

RIGHTS IN TECHNICAL DATA—SPECIFIC ACQUISITION (FEB 1985)

(a) *Definition.* Technical Data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be able or used to define a design or process or to procure, produce, support, maintain, or operate material. The Data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) *Government Rights.* The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the Contractor to the Government under this contract.

(c) *Copyright.* (1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies of phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1) above.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under section 201(b) of title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the contractor fail, by the Government:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 1952.227-75 (Feb. 85).

(d) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on Charges for Data.* The Contractor recognizes that the Government may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(End of clause)

1952.227-76 Government rights (unlimited).

As prescribed in 1927.405(g), insert the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (FEB 1985)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyrights laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

1952.227-77 Rights in shop drawings.

As prescribed in 1927.405(h), insert the following clause:

RIGHTS IN SHOP DRAWINGS (FEB 1985)

(a) Shop drawings for construction means drawings submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

1952.227-78 Disposition of prints and videotape recordings.

As prescribed in 1927.405(j) insert the following clause in License Agreements:

DISPOSITION OF PRINTS AND VIDEOTAPE RECORDINGS (FEB 1985)

If the Agency elects to discontinue distribution and exhibition hereunder, or upon expiration of the term of this License Agreement, the Agency will destroy all prints and erase all videotape recordings of the Film. A certificate(s) attesting to such destruction and/or erasure will be furnished the Licensor upon its written request.

(End of clause)

1952.232-70 Payment due date—F.O.B. Destination or F.A.S. Vessel.

As prescribed in 1932.111(a), insert a clause substantially the same as the following in contracts for supplies when delivery is on an F.O.B. Destination of F.A.S. Vessel basis or in service contracts for nonrecurring work payable upon completion of performance. Contracts providing advance payments or contracts for utilities covered by tariff are excluded:

PAYMENT DUE DATE—F.O.B. DESTINATION OF F.A.S. VESSEL (FEB 1985)

A. Payments under the contract will be due on the ———* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the supplies or services are accepted by the Government.

B. For the purpose of determining the due date for payment and for no other purpose, acceptance will be deemed to occur on the ———** calendar day after the date of delivery of the supplies or completion of service performance in accordance with the terms of the contract.

C. If the supplies or services are rejected for failure to conform to the technical requirements of the contract, such as damage in transit or otherwise, the provisions in paragraph (b) of this clause will apply to the new delivery of replacement supplies or satisfactory completion of the services.

D. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

**The contracting officer should insert a number (e.g., 15 days, unless some other number of days is necessary).

(End of clause)

1952.232-71 Payment due date—F.O.B. Origin.

As prescribed in 1932.111(a), insert a clause substantially the same as the following in contracts for supplies when delivery is on as F.O.B. Origin basis with inspection and acceptance at source and proof of shipment (e.g., a GBL) is to be required to be furnished with the invoice and in nonpersonal service contracts when the contractor's invoice covers services performed on a recurring basis with periodic billings:

PAYMENT DUE DATE—F.O.B. ORIGIN (FEB 1985)

A. Payments under this contract will be due on the ———* calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The invoice must include proper documentation that the supplies have been delivered to and accepted for shipment by an approved carrier; or in the case of services, that the services have been rendered and accepted.

B. However, when the contract specifies that inspection and acceptance will take place at the ultimate destination point, payment for items shipped F.O.B. Origin will not constitute final acceptance.

C. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

(End of clause)

1952.232-72 Interest on overdue payments.

As prescribed in 1932.111(b), insert the following clause in solicitations and contracts for supplies and services, including construction, and in leases of real property.

Interest on Overdue Payments (Feb 1985)

(a) The Prompt Payment Act, Pub. L. 97-177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract, except contracts providing advance payments or contracts for utilities covered by tariff, and requires the payment to contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

(End of clause)

1952.232-73 Invoice requirements.

As prescribed in 1932.111(c), insert the following clause in solicitations and contracts for supplies or services which require the submission of invoices:

Invoice Requirements (Feb 1985)

Invoices shall be submitted in an original and one (1) copy to the Government office designated in this contract or on the delivery order to receive invoices. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

(1) Name of the business concern and invoice date.

(2) Contract number, or other authorization for delivery of property or services.

(3) Description, price, and quantity of property and services actually delivered or rendered.

(4) Shipping and payment terms, and such other substantiating documentation or information as required by the contract.

(5) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(End of clause)

1952.232-74 Method of payment.

As prescribed in 1932.111(d), insert the following clause in solicitations and contracts:

Method of Payment (Feb 1985)

A. Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

B. The Contractor shall forward the following information in writing to the Contracting Officer not later than 7 days after receipt of notice of award:

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) (i) to whom check payments are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(a) Address and telegraphic abbreviation of the correspondent financial institution.

(b) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

C. Any changes to the information furnished under paragraph B. of this clause shall be furnished to the Contracting Officer in writing at least 30 days before the effective date of the change. It is the Contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

D. The document furnishing the information required in paragraphs B. and C. must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(End of clause)

1952.242-70 Authorized Representative of the Contracting Officer.

As prescribed in 1942.202-70 insert the following clause in solicitations and contracts:

Authorized Representative of the Contracting Officer (Feb 1985)

The Contracting Officer will appoint by letter an Authorized Representative of the Contracting Officer (AR/CO) who will be given the responsibility of ensuring that the work conforms to the requirements of the contract and such other responsibilities as are specifically identified in the letter of authorization, unless specifically delegated such authority, in writing, by the Contracting Officer. The AR/CO *shall not* have the authority to make changes in the scope or terms and conditions of the contract; *only* the Contracting Officer has such authority. THE RESULTANT CONTRACTOR IS HEREBY FOREWARNED THAT IT MAY BE HELD FULLY RESPONSIBLE FOR ANY CHANGES NOT AUTHORIZED IN ADVANCE, IN WRITING, BY THE CONTRACTING OFFICER, ANY MAY BE DENIED COMPENSATION FOR ANY ADDITIONAL WORK PERFORMED WHICH IS NOT SO AUTHORIZED.

(End of clause)

PART 1953—FORMS

EDITORIAL NOTE: IAAR forms referenced in this subpart do not appear in the Code of Federal Regulations. The list of forms following 1953.370 is set forth for the convenience of the user. Forms may be obtained by writing: Office of Contracts, United States Information Agency, Washington, DC 20547.

Subpart 1953.3—Illustrations of Forms

Sec.

1953.300 Scope of subpart.
1953.370 USIA forms.

LIST OF IAAR FORMS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 50 FR 13224, Apr. 3, 1985, unless otherwise noted.

Subpart 1953.3—Illustrations of Forms

1953.300 Scope of subpart.

This subpart contains illustrations of some forms referenced in this IAAR.

1953.370 USIA forms.

This section contains illustrations of USIA forms references in this IAAR.

LIST OF IAAR FORMS

1953.370-21 USIA Form IA-21, Abstract of Quotations.
1953.370-44 USIA Form IA-44, Requisition-Purchase—Order-Invoice for Professional Services.

CHAPTER 22—SMALL BUSINESS ADMINISTRATION

(Parts 2200 to 2299)

SUBCHAPTER B—ACQUISITION PLANNING

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SUBCHAPTER B—ACQUISITION PLANNING

PART 2209—CONTRACTOR QUALIFICATIONS

Subpart 2209.4—Debarment, Suspension, and Ineligibility

Sec.

2209.400 Scope.
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2209.407-1 General.
2209.407-2 Causes for suspension.
2209.407-3 Procedures.
2209.407-4 Period of suspension.
2209.407-5 Scope of suspension.

AUTHORITY: Sec. 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

SOURCE: 49 FR 28849, July 17, 1984, unless otherwise noted.

Subpart 2209.4—Debarment, Suspension, and Ineligibility

2209.400 Scope.

(a) These regulations:

(1) Prescribe policies and procedures governing the debarment and suspension of contractors by SBA for the causes given in 2209.406-2 and 2209.407-2;

(2) Provide for the listing of these debarred and suspended contractors, and of contractors declared ineligible (see the definition of "ineligible" in 2209.403; and

(3) Set forth the consequences of this listing.

(b) These regulations do not prescribe policies and procedures governing declaration of ineligibility. However, they do cover the listing of ineligible contractors and the effect of this listing.

2209.401 Applicability.

These regulations apply to contractors doing business directly with SBA. They do not apply to recipients of SBA financial or guarantee assistance, nor do they apply to SBA's small business set aside or Section 8(a) programs.

2209.402 Policy.

(a) SBA shall solicit offers from, award contracts to, and consent to subcontracts with responsible business concerns and individuals only. Debarment and suspension by SBA are discretionary actions that, taken in accordance with these regulations, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest, for the Government's protection and not for purposes of punishment. SBA shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in these regulations.

2209.403 Definitions.

(a) *Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliates.* Business concerns or individuals are affiliates if, directly or indirectly, (1) either one controls or can control the other or (2) a third party controls or can control both.

(c) *Agency,* as used in these regulations means, SBA, or any other agency of the Executive Branch consistent with the context in which the term is used.

(d) *Consolidated list of debarred, suspended, and ineligible contractors* means a list compiled, maintained, and distributed by the General Services Administration containing the names of contractors debarred or suspended by agencies under the procedures of OMB Policy Letter 82-1 (June 24, 1982), as well as contractors declared ineligible under other statutory or regulatory authority.

(e) *Contractor*, as used in these regulations, means any individual or other legal entity that:

(1) Submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a contract by SBA or a subcontract under a contract with SBA, or

(2) Conducts business with SBA as an agent or representative of another contractor.

(f) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

(g) *Debarment*, as used in these regulations, means action taken by a debarring official under 2209.406 to exclude a contractor from Government contracting for a reasonable, specified period; a contractor so excluded is "debarred."

(h) *Debarring official* means (1) the SBA Administrator or (2) a designee authorized by the SBA Administrator to impose debarment. That designated official is the SBA's Associate Administrator for Procurement and Technical Assistance.

(i) *Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(j) *Ineligible*, as used in these regulations, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive Order, or regulatory authority other than these regulations; for example, the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, and the Environmental Protection Acts and Executive orders.

(k) *Legal Proceedings* means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

(l) *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(m) *Suspending official* means (1) the SBA Administrator or (2) a designee authorized by the SBA Administrator to impose suspension. That designated official is SBA's Associate Administrator for Procurement and Technical Assistance.

(n) *Suspension*, as used in these regulations, means action taken by a suspending official under 2209.407 to disqualify a contractor temporarily from Government contracting; a contractor so disqualified is "suspended."

2209.405 Effect of listing.

(a) Contractors debarred or suspended by SBA, under 2209.406 or 2209.407 of these regulations, or by any other executive agency are excluded from receiving contracts, and SBA shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless SBA determines that there is a compelling reason for such action (see 2009.405-2, 2209.406-1(c) and 2209.407-1(d)).

(b) SBA will establish a list of its debarred or suspended contractors, and the Associate Administrator for Procurement and Technical Assistance will distribute this list to the General Services Administration within five working days after the action becomes effective.

(c) Contractors listed as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. SBA shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

2209.405-1 Continuation of current contracts.

(a) Notwithstanding the listing of a contractor for the causes set forth in these regulations, SBA may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless SBA's Administrator directs otherwise. A decision as to the type of termination action, if any, to be taken will be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) SBA shall not renew current contracts or subcontracts of debarred or suspended contractors, or otherwise extend their duration, unless SBA's Administrator or the Associate Administrator for Procurement and Technical Assistance states in writing the compelling reasons for renewal or extension.

2209.405-2 Restrictions on subcontracting.

When a debarred or suspended contractor is proposed as a subcontractor for any subcontract subject to SBA's consent, approval shall not be given unless the SBA Administrator or SBA's Associate Administrator for Procurement and Technical Assistance states in writing the compelling reasons for this approval.

2209.406 Debarment.

2209.406-1 General.

(a) The debarring official may, in the public interest, debar a contractor for any of the causes in 2209.406-2, using the procedures in 2209.406-3. The existence of a cause for debarment under 2209.406-2, however, does not necessarily *require* that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors will be considered in making any debarment decision.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond (see 2209.406-3(c)).

(c) A contractor's debarment shall be effective throughout the Executive Branch of the Government, unless an acquiring agency's head or a designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

2209.406-2 Causes for debarment.

The debarring official may debar a contractor for any of the causes listed in paragraphs (a) through (c) of this section:

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(1) Willful failure to perform in accordance with the terms of one or more contracts; or

(2) A prolonged history of failure to perform, or of extremely unsatisfactory performance of, one or more contracts.

(c) Any other cause so serious or compelling that it affects the present responsibility of a Government contractor or subcontractor.

2209.406-3 Procedures.

(a) *Investigation and referral.* Whenever cause for debarment becomes known to a contracting officer, the matter shall be referred through the Assistant Administrator for Administration to the Associate Administrator for Procurement and Technical Assistance. Information concerning actual or suspected fraudulent or criminal conduct and other irregularities which might serve as the basis for debarment of a concern or an individual shall be forwarded by the Associate Administrator for Procurement and Technical Assistance to SBA's Office of Inspector General. Upon receipt of such reports, or upon otherwise becoming aware of such actual or suspected conduct and irregularities, the Office of Inspector General will conduct, supervise, or coordinate such investigation as that Office deems necessary and, pursuant to any such investigation, will forward a report or findings to the Associate Administrator for Procurement and Technical Assistance.

(b) *Decisionmaking process.* (1) SBA has established procedures governing the debarment decisionmaking process that are as informal as practicable, consistent with principles of fundamental fairness and due process of law. These procedures afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(2) In actions not based upon a conviction or judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, SBA shall also—

(i) Afford the contractor an opportunity to appear before its Office of Hearings and Appeals with counsel and consistent with the procedures established by that Office, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* Debarment shall be initiated by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That debarment is being proposed;

(2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under 2209.406-2;

(4) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(5) Of SBA's procedures governing debarment decisionmaking;

(6) of the potential effect of the proposed debarment; and

(7) If no suspension is in effect under 2209.407, that no contracts will be awarded to the contractor pending a debarment decision.

(d) *Debarring official's decision.* (1) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect under 2209.407, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, the debarring official shall refer the matter to SBA's Office of Hearings and Appeals for findings of fact and a recommended decision. The debarring official may adopt, reject, modify or remand such decision for further appropriate findings. The debarring official shall then base the final decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) In actions in which there are no material facts in dispute, a final decision and written findings of fact shall be prepared by the debarring official which shall be concurred in by the SBA's General Counsel. The final decision will be based upon the facts as found in the administrative record, together with any information and argument submitted by the contractor and any other information in the administrative record.

(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates (see 2209.406-4); and

(iv) Advising that the debarment is effective throughout the Executive Branch of the Government unless the head of an acquiring agency or a designee makes the statement called for by 2209.406-1(c).

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

2209.406-4 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed 3 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined necessary, the procedures of 2209.406-3 of this subpart shall be followed to extend the debarment.

(c) The debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as—

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management of the debarred concern;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

2209.406-5 Scope of debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew if, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangment may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangment or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

2209.407 Suspension.

2209.407-1 General.

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in 2209.407-2, using the procedures in 2209.407-3.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy, of the evidence, SBA will consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment will include an examination of basic documents such as contracts, inspection reports, and correspondence.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see 2209.407-3(c)).

(d) A contractor's suspension shall be effective throughout the Executive Branch of the Government, unless an acquiring agency's head or a designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

2209.407-2 Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with obtaining, (i) attempting to obtain, or (ii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) of this section, constitutes adequate evidence for suspension.

(c) Violation of the terms of a Government contract or subcontract so serious as to justify suspension, such as—

(1) Willful failure to perform in accordance with the terms of one or more contracts; or

(2) A prolonged history of failure to perform or of extremely unsatisfactory performance of, one or more contracts.

(d) The suspending official may upon adequate evidence also suspend a contractor for any other cause so serious or compelling that it affects the present responsibility of a Government contractor or subcontractor.

2209.407-3 Procedures.

(a) *Investigation and referral.* Whenever cause for suspension becomes known to a contracting officer, the matter shall be referred through the Assistant Administrator for Administration to the Associate Administrator for Procurement and Technical Assistance. Information concerning actual or suspected fraudulent or criminal conduct and other irregularities which might serve as the basis for suspension of a concern or an individual shall be forwarded by the Associate Administrator for Procurement and Technical Assistance to SBA's Office of Inspector General. Upon receipt of such reports, or upon otherwise becoming aware of such actual or suspected conduct and irregularities, the Office of Inspector General will conduct, supervise, or coordinate such investigation as that Office deems necessary and, pursuant to any such investigation, will forward a report or findings to the Associate Administrator for Procurement and Technical Assistance.

(b) *Decisionmaking process.* (1) SBA has established procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness and due process. These procedures afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing or through a representative, information and argument in opposition to the suspension.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of the Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, SBA will also—

(i) Afford the contractor an opportunity to appear before SBA's Office of hearings and Appeals with counsel, submit documentary evidence, present witnesses and confront any person SBA presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by the suspending official by certified mail, return receipt requested—

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities (i) of a serious nature in business dealings with the Government or (ii) seriously reflecting on the propriety of further Government dealings with the contractor; any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceeding as may ensue.

(3) Of the cause(s) relied upon under 2209.407-2 for imposing suspension;

(4) Of the effect of the suspension;

(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless (i) the action is based on an indictment or (ii) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspensions would be prejudiced.

(d) *Suspending official's decision.* (1) In actions (i) based on an indictment, (ii) in which the contractor's submission does not raise a genuine dispute over material facts; or (iii) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, the suspending official shall refer such matters to SBA's Office of Hearings and Appeals for findings of fact and a recommended decision. The suspending official may adopt, reject, modify or remand any such decision for further appropriate findings. The suspending official shall then base the final Agency decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) In actions in which there are no material facts in dispute, a final decision and written findings of fact shall be prepared by the suspending official which shall be concurred in by the SBA's General Counsel. The final decision will be based upon the facts as found in the administrative record, together with any information and argument submitted by the contractor and any other information in the administrative record.

(3) The suspending official may modify or terminate the suspension or leave it in force (for example, see 2209.407-4(c) for the reasons for reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or the imposition of debarment by any agency.

(4) Prompt written notice of the suspending official's decision shall be sent to the contractor by certified mail, return receipt requested.

2209.407-4 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner termination by the suspending official or as provided in this section.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension, at least 30 days before the suspension period expires, to give that Department an opportunity to request an extension.

2209.407-5 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see 2209.406-5), except that the procedures of 2209.407-3 shall be used in imposing suspension.

CHAPTER 24—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

(Parts 2400 to 2499)

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SUBCHAPTER A—GENERAL

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

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AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7697, Mar. 1, 1984, unless otherwise noted.

2401.000 Scope of part.

This part describes the method by which the Department of Housing and Urban Development (HUD) implements, supplements and deviates from the Federal Acquisition Regulation (FAR) through the establishment of the HUD Acquisition Regulation (HUDAR), which prescribes the Department's procurement policies and procedures under the FAR System.

Subpart 2401.1—Purpose, Authority, Issuance

2401.100 Scope of subpart.

This subpart describes the HUDAR and states its relationship to the FAR System. This subpart also provides the explanation of the purpose and the authorities under which the HUDAR is issued.

2401.101 Purpose.

The Department of Housing and Urban Development Acquisition Regulation is hereby established as chapter 24 of the Federal Acquisition Regulation System (48 CFR chapter 24). It is issued to provide uniform Departmental policies and procedures for the acquisition of supplies, personal property and non-personal services by the Department's contracting activities and to make these policies and procedures readily available to Departmental personnel and to the public.

2401.102 Authority.

The HUDAR is prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)), section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), the Secretary's delegation effective January 19, 1976, 41 FR 2665, and the general authorization in FAR 1.301.

2401.103 Applicability.

All acquisition of personal property and non-personal services (including construction) by HUD, except as may be otherwise authorized by law, must be accomplished in accordance with the HUDAR and the FAR.

2401.104 Issuance.

2401.104-2 Arrangement.

(a) *General.* Chapter 24 is divided into parts, subparts, sections, subsections, paragraphs and further subdivisions as necessary.

(b) *Numbering.* Generally, the numbering system and part, subpart, and section titles used in the HUDAR conform with those used in the FAR or as follows:

(1) When the HUDAR implements or deviates from a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or deviation will be numbered and captioned where possible to correspond to the FAR part, subpart, section, subsection, or paragraph. For example, FAR subpart 1.4, Deviations, is implemented in HUD's acquisition regulations at subpart 2401.4, Deviations. (The "24" in the number indicates what chapter of title 48 contains the HUDAR.)

(2) When HUD supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number will parallel the FAR part, subpart, section, subsection or paragraph it is supplementing. For example, FAR 1.602, Contracting Officers, does not contain a provision for ratifying unauthorized contract awards. The HUDAR does provide for this. Since the subject matter supplements what is contained in FAR 1.602, the HUDAR section supplementing the FAR is numbered 2401.602-70.

(3) Where material in the FAR requires no implementation or deviation, there is no corresponding numbering in the HUDAR. Therefore, there may be gaps in the HUDAR sequence of numbers where the FAR, as written, is applicable to the HUDAR and requires no further implementation.

(c) *Citation.* The HUDAR will be cited in accordance with FEDERAL REGISTER standards approved for the FAR. Thus, this section when referred to in the HUDAR is cited as 2401.104-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2401.104-2(c)." Any section of the HUDAR may be formally identified by the section number, e.g., "HUDAR 2401.104-2." In the HUDAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 37.108.

2401.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more persons. HUD has received approval from OMB to collect information under the provisions of its Acquisition Regulation. The OMB Approval Number is 2535-0091.

[50 FR 46575, Nov. 8, 1985]

Subpart 2401.3—Agency Acquisition Regulations

2401.301 Policy.

(a)(1) *Implementation.* The HUDAR implements and supplements the FAR. Implementation material is that which expands upon related FAR material. Supplementing material is that for which there is no counterpart in the FAR.

2401.302 Limitations.

(c) *Exclusions.* Certain HUD policies and procedures which come within the scope of this chapter are not included in the HUDAR. Not included is a policy or procedure of an internal nature or which is expected to be effective for a period of less than six months.

Subpart 2401.4—Deviations

2401.403 Individual deviations.

In individual cases, proposed deviations from the FAR or HUDAR shall be submitted to the Senior Procurement Executive (see 2401.601-70) for approval or other necessary or appropriate action. A supporting statement shall be submitted with the proposed deviation indicating briefly the nature of the deviation and the reasons for granting the deviation, consistent with FAR 1.402. The contract file shall include a copy of the request submitted and the approval. In emergency situations involving individual cases, deviation approvals may be processed by telephone and later confirmed in writing.

[49 FR 7697, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986; 53 FR 46533, Nov. 17, 1988]

2401.404 Class deviations.

For deviations which affect more than one contracting action, proposed deviations from the FAR or HUDAR shall be submitted to the Senior Procurement Executive for approval or other necessary or appropriate action. Requests for deviations shall be supported by statements which fully disclose the nature of the deviation and the need there of. The Senior Procurement Excutive will consider the proposal on an expedited basis and in the case of a proposed FAR deviation will comply with FAR 1.404.

[49 FR 7697, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2401.6—Contracting Authority and Responsibilities

2401.601 General.

2401.601-70 Senior Procurement Executive.

The Assistant Secretary for Administration is the Department's Senior Procurement Executive and is responsible for all Departmental procurement policy, regulations, and procedures, except for internal procedures related to programmatic procurements of the Government National Mortgage Association and the Acquired Property program under the Assistant Secretary for Housing-Federal Housing Commissioner. The Senior Procurement Executive also is responsible for the development of procurement systems, evaluation of systems in accordance with approved criteria, enhancement of career management of the procurement work force, and certification to the Secretary that the Department's procurement systems meet approved criteria.

[52 FR 47396, Dec. 14, 1987]

2401.601-71 Office of Procurement and Contracts.

The Office of Procurement and Contracts, in the Office of the Assistant Secretary for Administration, is responsible for all Departmental procurement except as specified below. The Office of Procurement and Contracts also is responsible for awarding all contracts and agreements in support of the Department's Consolidated Supply Program. Such awards will be made under the regulations found at 24 CFR part 965, subpart G. These contracts are established for voluntary use by Public Housing Agencies and Indian Housing Authorities in their purchase of certain supplies and equipment necessary for the operation and maintenance of low-income housing.

[50 FR 46575, Nov. 8, 1985. Redesignated at 52 FR 47396, Dec. 14, 1987]

2401.601-72 Acquired Property Program of the Office of Housing.

The Office of Housing, headed by the Assistant Secretary for Housing-Federal Housing Commissioner, awards and manages procurement actions for HUD-owned property and property held by HUD as mortgagee-in-possession under the National Housing Act (12 U.S.C. 1701-1749). This includes all contract actions associated with property disposition, such as the procurement of goods and services for the management, repair, improvement, alteration, demolition, maintenance, operation, rental, sale or other disposal of such properties. This function also includes the award and management of procurement actions incidental to a foreclosure or the taking of a deed-in-lieu of foreclosure on property with HUD-held mortgages, including purchase money mortgages. Operational contracting for the program is decentralized to specific positions at HUD Field Offices. In addition, the Office of Housing, through its Headquarters staff:

(a) Awards contracts for the above-described functions when the contracts have national applicability;

(b) Provides technical assistance and operational contracting support to

Housing Field Office personnel, as needed;

(c) Issues internal procedures for the above, which are consistent with and not duplicative of the FAR or HUDAR.

[50 FR 46575, Nov. 8, 1985. Redesignated at 52 FR 47396, Dec. 14, 1987]

2401.601-73 Government National Mortgage Association (GNMA).

The President, GNMA, exercises statutory procurement authority with respect to requirements related to GNMA's programmatic functions. The HUDAR does not apply to these procurement actions. The President, GNMA is responsible for issuing and complying with appropriate GNMA procurement guidelines not inconsistent with standards established by the Senior Procurement Executive.

[50 FR 46575, Nov. 8, 1985. Redesignated at 52 FR 47396, Dec. 14, 1987]

2401.601-74 Regional Offices.

Procurement of supplies and services for HUD Regional requirements is accomplished at each Regional Office by the Regional Contracting Officer and the Director of the Administrative Services Division, Office of Administration.

[50 FR 46575, Nov. 8, 1985. Redesignated at 52 FR 47396, Dec. 14, 1987]

2401.602 Contracting Officers.

2401.602-3 Ratification of unauthorized commitments.

(b)(4) A request for ratification shall be sent to the Contracting Officer through the Head of the Contracting Activity (HCA). The request will include an explanation as to the need for the service, the reason why normal procurement procedures were not followed, to what extent price competition was received or the price otherwise justified, and, corrective management actions to avoid ratifications in the future. If the justification is adequate, the ratification will be signed by the Contracting Officer and approved by the HCA. When circumstances warrant, the HCA may establish more stringent ratification procedures.

(c)(5) If the amount involved is less than $1,000, the Contracting Officer shall recommend payment. If the amount involved exceeds $1,000, the HCA shall recommend payment. In either case, legal concurrence may be requested if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when a legal issue is involved.

[53 FR 46533, Nov. 17, 1988]

2401.603 Selection, appointment and termination of appointment.

2401.603-2 Selection.

In selecting Contracting Officers, the appointing authorities shall consider experience, education, training, business acumen, judgment, character, reputation and ethics. In the area of experience, education and training, the following shall be required unless contracting authority is limited to simplified small purchase procedures:

(a) Experience, for appointment of an individual to a position having Contracting Officer authority, shall consist of a minimum of two years experience performing contracting, procurement or purchasing operations in a government or commercial procurement office. Alternatively, where appointment of a Contracting Officer involves a specialized procurement field, experience in that field may be considered as a criterion for the appointment.

(b) Educational requirements for an individual in a position having Contracting Officer authority shall be, as a minimum, the equivalent of a Bachelor's Degree from an accredited college or institution preferably with major studies in Business Administration, Law, Accounting or related fields. Experience related to the field of procurement involved (e.g., supply construction, etc.), gained in a government or nongovernment contracting office, may be substituted for educational requirements when it is determined in writing and made a part of the appointment files (as stipulated in 2401.603-3(b)) that a potential appointee is otherwise qualified by virtue of extensive contract-related experience or training.

(c) Training requirements of an individual Contracting Officer or an individual appointed to a position having contracting authority shall include successful completion of training courses in Government Basic Procurement of not less than 80 hours and Government Contract Administration of not less than 80 hours. These requirements may be temporarily waived by the Field Office Manager/Supervisor for Contracting Officers serving the Acquired Property Program. Appointees or incumbents not meeting the special training requirements shall be given 24 months to acquire the minimum qualification standards.

(d) The selection requirements specified in paragraphs (a) through (c) of this section are applicable to all full-time permanent (FTP) personnel whose primary duties are performed as a Contracting Officer as opposed to the individuals who supervise Contracting Officers, or to individuals who normally spend less than 10 percent of their time in the capacity of a Contracting Officer.

[49 FR 7697, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984]

2401.603-3 Appointment.

(a) Appointments below the level of Assistant Secretary shall be made in writing by the Head of the Contracting Activity on a "Certificate of Appointment," SF 1402. Limitations on the scope of the authority to be exercised by the Contracting Officer, other than those contained in applicable laws and regulations shall be entered on the face of the appointment notification.

(b) Field Office Managers or Supervisors will execute a written affirmative statement that the individual, placed in the position to commit the Government as Contracting Officer, meets the selection criteria of the Federal Acquisition Regulation and HUDAR. If a temporary waiver (see 2401.603-2) is to be granted concerning the training requirements, the written statement should include the waiver and the statement that the training requirements must be met within 24 months. This statement shall be made part of the official personnel file of the Contracting Officer or the individual so selected or designated. The designation and statement shall be based on the size and complexity of contracts the individual will be required to execute and administer, and also shall consider any limitations on the scope of the authority to be exercised.

PART 2402—DEFINITIONS OF WORDS AND TERMS

Sec.
2402.000 Scope of part.

Subpart 2402.1 Definitions

2402.101 Definitions.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2402.000 Scope of part.

This part contains definitions of terms used generally throughout the HUDAR, in addition to those set forth in FAR part 2. Additional definitions will be found in individual subparts of the FAR and HUDAR covering terms used in those subparts only.

[49 FR 7699, Mar. 1, 1984]

Subpart 2402.1—Definitions

2402.101 Definitions.

Department—means The Department of Housing and Urban Development, which may also be designated as "HUD".

Head of Contracting Activity is defined in accordance with the FAR. The following HUD officials are designated HCAs:

(1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement and the Consolidated Supply Program;

(2) The Regional Directors, Offices of Administration for Regional Office procurements;

(3) The Chief, Management Branch, Office of Multifamily Housing Management, for Headquarters acquired properties operations;

(4) The Regional Director, Office of Housing, for decentralized procure-

ment for acquired properties in co-located Regional/Field Offices;

(5) The Managers, HUD Field Offices, for decentralized procurement in Field Offices for acquired properties; and

(6) The President, Government National Mortgage Association (GNMA), for procurements related to GNMA's programmatic functions.

Primary Organization Heads—are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Under Secretary. The Primary Organization Heads of HUD are: the Assistant Secretaries, the General Counsel, the Deputy Under Secretaries, the President of GNMA, the President of the Solar Energy and Energy Conservation Bank, the Inspector General, and the Regional Administrators.

Secretary—means the Secretary of the Department of Housing and Urban Development, or his or her designee.

Senior Procurement Executive—means the Assistant Secretary for Administration. The Senior Procurement Executive's responsibilities are stated in HUDAR 2401.601-70.

[50 FR 46575, Nov. 8, 1985, as amended at 52 FR 47396, Dec. 14, 1987; 53 FR 46534, Nov. 17, 1988]

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2403.1—Safeguards

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2403.101 Standards of conduct.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.
2403.204 Treatment of violations.

Subpart 2403.3—Reports of Identical Bids and Suspected Antitrust Violations

2403.303-70 Reporting requirements.

Subpart 2403.4—Contingent Fees

2403.408 Evaluation of the SF 119.
2403.408-1 Responsibilities.

Sec.
2403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 2403.5—Other Improper Business Practices

2403.502 Subcontractor kickbacks.

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.601 Policy.

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7700, Mar. 1, 1984, unless otherwise noted.

Subpart 2403.1—Safeguards

2403.101 Standards of conduct.

Detailed rules which apply to the conduct of HUD employees are set forth in 24 CFR part 0.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

Suspected violations of the gratuities clause (FAR 52.203-3) shall be reported to the Head of the Contracting Activity (HCA) in writing. The HCA will request the Office of Inspector General (OIG) to conduct any necessary investigation. Upon receipt of the OIG report, the HCA will evaluate the circumstances to determine if a violation has occurred. The HCA will refer violations and recommended corrective actions to the Senior Procurement Executive for disposition.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

2403.204 Treatment of violations.

The Senior Procurement Executive will process violations in accordance with FAR 3.204.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.3—Reports of Identical Bids and Suspected Antitrust Violations

2403.303-70 Reporting requirements.

Potential anti-competitive practices such as described in FAR subpart 3.3, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Senior Procurement Executive and the Inspector General. The Office of General Counsel will provide reports to the Attorney General as appropriate.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.4—Contingent Fees

2403.408-1 Responsibilities.

(b) The contracting officer's documentation of the evaluation, conclusion, and any proposed actions shall be submitted for the review and approval of the Head of the Contracting Activity and the Office of General Counsel.

2403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant against Contingent Fees shall report the matter promptly to the Head of the Contracting Activity.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the Head of the Contracting Activity shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

(1) If before award, reject the bid or roposal.

(2) If after award, enforce the government's right to void the contract or o recover the fee.

(3) Initiate suspension or debarment ction.

(4) Refer suspected fraudulent or riminal matters to the Office of Inspector General for possible referral o the Department of Justice.

Subpart 2403.5—Other Improper Business Practices

2403.502 Subcontractor kickbacks.

(b) Contracting Officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity to the Office of Inspector General consistent with the procedures for reporting any violation of law contained in HUD Handbook 2000.3, REV. 2, Office of Inspector General Activities (1983).

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.601 Policy.

The Senior Procurement Executive must approve exceptions to the restriction against contracts with Government employees under FAR subpart 3.6. In addition, the Contracting Officer shall comply with FAR subpart 9.5 before awarding any such contract.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

PART 2404—ADMINISTRATIVE MATTERS

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2404.8—Contract Files

2404.805-1 Disposal of contract files.

Unsuccessful bids and proposals shall be disposed of as follows:

(a) *By the contracting activity.* Unsuccessful cost and technical proposals shall be retained in the contracting activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the contracting office shall ship one copy of each unsuccessful bid or proposal to the Federal Records Center unless (1) a debriefing has been requested but not held or (2) a protest is pending concerning the procurement. In no event shall these documents be destroyed before expiration of the retention periods in FAR 4.805.

(b) *By the program office.* Unsuccessful proposals shall be retained on file in the program office which conducted the technical evaluation for a period of two months following the contract award. Upon expiration of the two month period, the program office shall return one copy of each unsuccessful bid or proposal not required for the conduct of debriefings to the contracting activity for proper disposition. The remaining copies will be destroyed.

[49 FR 7700, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2405—PUBLICIZING CONTRACT ACTIONS

Subpart 2405.2—Synopses of Proposed Contract Actions

Sec.
2405.202 Exceptions.

Subpart 2405.5—Paid Advertisements

2405.502 Authority.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2405.2—Synopses of Proposed Contract Actions

2405.202 Exceptions.

(b) The Senior Procurement Executive shall make the written determination in accordance with FAR 5.202(b) that advance notice of proposed contract actions is not appropriate or reasonable.

[50 FR 46576, Nov. 8, 1985]

Subpart 2405.5—Paid Advertisements

2405.502 Authority.

Use of paid advertisements in newspapers, trade journals, and other media are authorized by Delegations or Redelegations of Authority, subject to the availability of funds.

[49 FR 7701, Mar. 1, 1984]

PART 2406—COMPETITION REQUIREMENTS

Subpart 2406.2—Full and Open Competition After Exclusion of Sources

Sec.
2406.202 Establishing or maintaining alternative sources.

Subpart 2406.3—Other Than Full and Open Competition

2406.304 Approval of the justification.
2406.304-70 Approval of the justification—Headquarters acquired property program.
2406.304-71 Approval of the justification—Field Office procurements.
2406.304-72 Approval of the justification—Procurement Review Board.

Subpart 2406.5—Competition Advocates

2406.501 Requirement.

AUTHORITY: Competition in Contracting Act of 1984 (41 U.S.C. 253); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 50 FR 46576, Nov. 8, 1985, unless otherwise noted.

Subpart 2406.2—Full and Open Competition After Exclusion of Sources

2406.202 Establishing or maintaining alternative sources.

(b)(1) The HCA shall sign the Determination and Finding (D&F) required by FAR 6.202(b)(1).

Subpart 2406.3—Other Than Full and Open Competition

2406.304 Approval of the justification.

(c) A class justification for other than full and open competition shall be approved in writing by the Senior Procurement Executive.

2406.304-70 Approval of the justification—Headquarters acquired property program.

(a) The justification for other than full and open competition for the Headquarters acquired property program shall be approved in writing—

(1) For a proposed contract not exceeding $100,000, by the Chief, Management Branch, Office of Multifamily Housing Management.

(3) For a proposed contract more than $1 million but not exceeding $10 million, by the Director, Office of Multifamily Housing Management.

[50 FR 46576, Nov. 8, 1985, as amended at 53 FR 46534, Nov. 17, 1988]

2406.304-71 Approval of the justification—Field Office procurements.

(a) The justification for other than full and open competition for Field Office procurements shall be approved in writing—

(3) For a proposed contract more than $1 million but not exceeding $10 million, by the Deputy Regional Administrator.

2406.304-72 Approval of the justification—Procurement Review Board.

(a) The Senior Procurement Executive shall provide for the operation of a Procurement Review Board (PRB) to review and approve all Headquarters-proposed sole-source awards in excess of the small purchase limitation that are based upon FAR exceptions 6.302-1, 6.302-2, or 6.302-3. The PRB shall be comprised of senior departmental managers and shall use criteria consistent with those in the FAR in evaluating proposed sole-source awards.

(b) PRB review and approval shall be in addition to that required by FAR 6.304(a)(1-3). No justification for other than full and open competition proposing a sole-source award as specified in 2406.304-72(a) of this subpart, shall be considered final and approved by the Department until it has been reviewed and approved by the PRB, and in the case of a sole-source award in excess of $10 million, by the Senior Procurement Executive.

(c) Regional Administrators-Regional Housing Commissioners shall provide for the operation of Regional Procurement Review Boards based upon directions received from the Senior Procurement Executive.

Subpart 2406.5—Competition Advocates

2406.501 Requirement.

The Deputy Assistant Secretary for Administration is designated as the Department's competition advocate. The authority to approve replacements for all HUD competition advocates is delegated to the Senior Procurement Executive.

PART 2407—ACQUISITION PLANNING

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2407.1—Acquisition Plans

2407.102 Policy.

The Senior Procurement Executive is responsible for establishing and maintaining internal procedures to implement the Department's Advance Procurement Planning System (APPS). The APPS should generally meet the criteria contained in FAR subpart 7.1.

[49 FR 7701, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

PART 2409—CONTRACTOR QUALIFICATIONS

Subpart 2409.5—Organizational Conflicts of Interest

Sec.

2409.500 Scope of subpart.
2409.501 Definition.
2409.502 Applicability.
2409.504 Contracting Officer responsibilities.
2409.508 Solicitation provisions and contract clause.
2409.508-1 Solicitation provisions.
2409.508-2 Contract clause.

Subpart 2409.70—Debarment, Suspension, and Ineligibility

2409.701 HUD regulations on debarment, suspension, and ineligibility.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7701, Mar. 1, 1984, unless otherwise noted.

Subpart 2409.5—Organizational Conflicts of Interest

2409.500 Scope of subpart.

This subpart prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest.

2409.501 Definition.

Organizational conflict of interest is a situation in which the nature of work under a proposed Government contract and a prospective contractor's organizational financial, contractual, or other interests are such that (a) award of the contract may result in an unfair competitive advantage to the contractor or (b) impair the contractor's objectivity in performing the contract work.

2409.502 Applicability.

The procedures described in this section shall be used for all consulting services contracts and for any other procurement involving the acquisition of services when the Contracting Officer determines that the nature of the procurement presents a potential for an organizational conflict of interest.

2409.504 Contracting officer responsibilities.

The following actions are required whenever it is determined that this section is applicable:

(a) *Disclosure or Representation.* (1) Each solicitation shall contain a provision which requires a potential offeror to provide a statement which describes in a concise manner all relevant facts concerning any present or current planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under this section and bearing on whether the offeror and any proposed subcontractor or consultant has a possible organizational conflict of interest with respect to:

(i) Being able to render impartial, technically sound, and objective assistance or advice; or

(ii) Being given an unfair competitive advantage.

The offeror also may provide relevant facts that show how its organizational structure or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organizations and how that structure or system would eliminate or neutralize such organizational conflict.

(2) In the absence of any interest referred to above, the offeror shall submit a statement certifying that to the best of its knowledge and belief no such interest exists.

(3) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information and any other relevant information known to the Contracting Officer will be used to determine whether an award to the offeror may create any organizational conflict of interest. If such organizational conflict of interest is found to exist, the Contracting Officer may:

(i) Impose appropriate conditions which eliminate or neutralize such conflict;

(ii) Disqualify the offeror; or,

(iii) Determine that it is otherwise in the best interests of the United States to contract with the offeror by including appropriate conditions mitigating such conflict in the contract awarded.

(4) Failure to provide the disclosure or execute the representation will be deemed to be a minor infraction and the offeror or contractor will be permitted to correct the omission within a time frame established by the Contracting Officer.

(5) Refusal to provide the disclosure or representation and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant interest shall disqualify the offeror or contractor for award or provide the rationale for post-award default action if the exercise of due diligence would have disclosed an apparent conflict. This provision applies equally to post-award disclosure requirements contained in the clause required by HUDAR 2409.508-2.

(b) *Administrative requirements.* (1) The disclosure or certification required by HUDAR 2409.508-1 and 2409.508-2 is designed to alert the Contracting Officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor. However, this disclosure or representation may not identify a potential organizational conflict of interest involving a successful offeror that could affect his or her participation in subsequent procurements arising out of or related to work performed under a contract that results from the solicitation currently under consideration. Accordingly, whenever such potential conflicts are foreseeable, a special notice also shall be included in the solicitation informing offerors of the fact that such a potential conflict is foreseen and that a special contract clause designed to eliminate or neutralize such conflict will be included in any resultant contract. Such notice shall specify the proposed extent and duration of restrictions to be imposed with respect to participation in subsequent procurements. A fixed term of reasonable duration is measured by the time required to eliminate what otherwise would constitute an unfair competitive advantage. This is a variable. However, in no event shall an exclusion be stated which is not related to a specific expiration date or a certain event. The Government shall not determine without notice on an after-the-fact basis that performance of a contract created an organizational conflict of interest with respect to procurements arising out of or related to work performed under that contract.

(2) Whenever an organizational conflict of interest is found to exist, it shall be adequately eliminated, or neutralized through the use of an appropriate special contract clause. Examples of the types of clauses which may be employed include, but are not limited, to the following:

(i) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related nonproduction contract previously performed by the Contractor.

(ii) Software exclusion clauses which:

(A) Require the contractor, members of his or her Board of Directors, or his or her chief executives to eliminate, or neutralize an organizational conflict of interest:

(B) Provide for the protection of the confidentiality of data and guard against its unauthorized use; or

(C) Prohibit other segments or divisions of the contractor from becoming involved in the performance of the contract work or being in a position to influence such work.

(iii) The prospective contractor shall be given the opportunity to negotiate the terms and conditions of the clause and its application. The extent and time period of any restrictions shall be specified in the clause.

(c) *Contract award when an organizational conflict of interest is present.* (1) No contract or modification award shall be made to an offeror or contractor having an organizational conflict of interest with respect to that contract or modifications unless:

(i) The conflict has been eliminated or neutralized; or

(ii) The Contracting Officer determines that the award of the contract would be otherwise in the best interests of the Government. Where such a determination is made, an appropriate written finding and determination shall be placed in the contract file.

(2) Examples of circumstances justifying such a determination include but are not necessarily limited to:

(i) Situations where the public exigency will not otherwise permit; or,

(ii) Situations where the requirement cannot otherwise be obtained.

(3) The Contracting Officer's determination shall be approved by the Head of the Contracting Activity before award.

(d) Action in Lieu of Termination. If the Contracting Officer determines that it would not be in the best interest of the Government to terminate a contract as provided in the clause cited at HUDAR 2409.508-2, the Contracting Officer shall take every reasonable action to eliminate, or otherwise neutralize the organizational conflict of interest.

[49 FR 7701, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 53 FR 46534, Nov. 17, 1988]

2409.508 Solicitation provisions and contract clause.

2409.508-1 Solicitation provisions.

The Contracting Officer shall insert the provisions at 2452.209-70, Organizational Conflicts of Interest Notification, and 2452.209-71, Organizational Conflicts of Interest Certification, in all solicitations over the small purchase limitation.

[53 FR 46534, Nov. 17, 1988]

2409.508-2 Contract clause.

The Contracting Officer shall insert the clause at 2452.209-72, Organizational Conflicts of Interest, in all contracts.

[53 FR 46534, Nov. 17, 1988]

Subpart 2409.70—Debarment, Suspension, and Ineligibility

2409.701 HUD regulations on debarment, suspension, and ineligibility.

Departmental policies and procedures concerning debarment and suspension are contained in 24 CFR part 24.

PART 2412—CONTRACT DELIVERY OR PERFORMANCE

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46534, Nov. 17, 1988, unless otherwise noted.

Subpart 2412.1—Delivery or Performance Schedules

2412.104 Contract clause.

(a) The Contracting Officer may insert the clause at 2452.212-70, Contract Period, in all term form cost-reimbursement and fixed-price service solicitations and contracts.

(b) [Reserved]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 2413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2413.1—General

Sec.

2413.107 Solicitation and evaluation of quotations.

Subpart 2413.4—Imprest Fund

Sec.

2413.403 Agency responsibilities.
2413.404 Conditions for use.

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.
2413.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2413.1—General

SOURCE: 53 FR 46535, Nov. 17, 1989, unless otherwise noted.

2413.107 Solicitation and evaluation of quotations.

(a)(4) Contracting Officers may use HUD Form 24007, Purchase/Delivery Order Data File, to record all relevant data pertaining to a small purchase, including recording written and oral quotations received and documenting orders against GSA contracts.

Subpart 2413.4—Imprest Fund

2413.403 Agency responsibilities.

(d) If imprest funds are to be used, the procedures established by HUD Handbook 1925.2, Establishment and Operation of Imprest Funds (April, 1981) will be followed.

[49 FR 7702, Mar. 1, 1984]

2413.404 Conditions for use.

(a) The transaction does not exceed $500 or such other limits as have been approved by the Senior Procurement Executive.

[51 FR 40333, Nov. 6, 1986]

Subpart 2413.5—Purchase Orders

SOURCE: 53 FR 46534, Nov. 17, 1988, unless otherwise noted.

2413.505 Purchase order and related forms.

2413.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Contracting Officers may use the HUD Form 24001, Order for Supplies or Services, in lieu of Optional Form 347 for individual purchases not exceeding the small purchase limit.

(b) For small purchases under the Acquired Property Program, Contracting Officers shall use HUD Form 2542, Purchase Order and Payment Authorization. This form shall not be used for construction purchases expected to exceed $2,000. It shall not be used for purchases above the small purchase limit.

PART 2414—SEALED BIDDING

Subpart 2414.4—Opening of bids and Award of Contract

Sec.

2414.404 Rejection of bids.
2414.404-1 Cancellation of invitations after opening.
2414.406 Mistakes in bid.
2414.406-3 Other mistakes disclosed before award.
2414.406-4 Mistakes after award.
2414.407 Award.
2414.407-2 Responsible bidder-reasonableness of price.

AUTHORITY: Competition in Contracting Act of 1984 (41 U.S.C. 253); sec. 205(c) of the Federal Property and Administrative Service Act of 1949 (42 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7702, Mar. 1, 1984, unless otherwise noted.

Subpart 2414.4—Opening of Bids and Award of Contracts

2414.404 Rejection of bids.

2414.404-1 Cancellation of invitations after opening.

(c) Invitations may be cancelled and all bids rejected before award but after opening when the Head of the Contracting Activity, as described in subpart 2402.1, determines in writing that cancellation is appropriate and consistent with FAR 14.404-1.

[50 FR 46577, Nov. 8, 1985]

2414.406 Mistakes in bids.

2414.406-3 Other mistakes disclosed before award.

(e) Mistakes in bids disclosed before award (other than obvious clerical errors) shall be submitted to the following authorities for determinations:

(1) *Director, Office of Procurement and Contracts* for all Departmental procurement except as stated in paragraphs (2) and (3) of this section.

(2) *Field Office Managers for the Acquired Property Program.* The Field Office Manager will obtain the concurrence of the Office of General Counsel in Headquarters or the Regional Counsel for the respective Field Office before notification to the bidder. The Contracting Officer shall be notified promptly of the course of action to be taken.

(3) *Chief, Management Branch, Office of Multifamily Housing Management* for Headquarters acquired property operations.

[50 FR 46577, Nov. 8, 1985, as amended at 53 FR 46535, Nov. 17, 1988]

2414.406-4 Mistakes after award.

If a contractor's discovery and request for correction of a mistake in bid is not made until after the award, it shall be processed in accordance with FAR 14.406-4. For each determination, the Field Office Manager will obtain the concurrence of the Office of General Counsel (Headquarters) or Regional Counsel (field) before notification to the bidder. The Contracting Officer shall be notified promptly of the course of action to be taken.

2414.407-701 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the Contracting Officer makes a written determination that: (a) The specifications were clear and not unduly restrictive; (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted; (c) the price is reasonable; and (d) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the file.

[49 FR 7702, Mar. 1, 1984; 51 FR 7948, Mar. 7, 1986]

PART 2415—CONTRACTING BY NEGOTIATION

Subpart 2415.4—Solicitation and Receipt of Proposals and Quotations

Sec.

2415.407 Solicitation provisions.
2415.408 Issuing solicitations.
2415.411 Receipt of proposals and quotations.
2415.411-70 Recording of proposals.
2415.413 Disclosure and use of information before award.
2415.413-1 Alternate 1.

Subpart 2415.5—Unsolicited Proposals

2415.505 Content of unsolicited proposals.
2415.505-70 Unsolicited research proposals.

Subpart 2415.6—Source Selection

2415.604 Responsibilities.
2415.605 Evaluation factors.
2415.608 Proposal evaluation.
2415.609 Competitive range.
2415.610 Written or oral discussion.
2415.611 Best and final offers.
2415.611-70 Final selection.
2415.613 Alternative source selection procedures.
2415.613-70 Applicability.
2415.613-71 Evaluation and negotiation or procurements.

Subpart 2415.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

2415.1004 Protests against award.

AUTHORITY: Competition in Contracting Act of 1984 (41 U.S.C. 253); sec. 205(c) of the

Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7703, Mar. 1, 1984, unless otherwise noted.

Subpart 2415.4—Solicitation and Receipt of Proposals and Quotations

2415.407 Solicitation provisions.

(a) The Contracting Officer shall insert the provision at 2452.215-70, Proposal Content and Outline, in all negotiated solicitations over the small purchase limitation.

(b) The Contracting Officer shall insert the provisions at 2452.215-71, DUNS Contractor Establishment Number, in all solicitations that exceed the small purchase limitation.

[53 FR 46535, Nov. 17, 1988]

2415.408 Issuing solicitations.

(d) The FAR policy on bidding time for procurements that involve sealed bids (FAR 14.202-1) is applicable to negotiated procurements under this part.

[50 FR 46577, Nov. 8, 1985]

2415.411 Receipt of proposals and quotations.

2415.411-70 Recording of proposals.

HUD Form 4058, Abstract of Proposals, may be used to record the names and addresses of offerors whose proposals are received before the stated deadline. The offerors total price, including any estimated cost and fixed fee are to be recorded after the deadline at the time the proposals are opened.

[53 FR 46535, Nov. 17, 1988]

2415.413 Disclosure and use of information before award.

2415.413-1 Alternate 1.

The Department shall employ the procedures in FAR Alternate 1 regarding disclosure and use of information.

Subpart 2415.5—Unsolicited Proposals

2415.505 Content of unsolicited proposals.

2415.505-70 Unsolicited research proposals.

FAR Subpart 15.5 outlines the policies and procedures relating to unsolicited proposals. In addition to these requirements, the Department requires that each award made as the result of an unsolicited proposal for research contain a commitment to provide actual cost-sharing. This provision will be included in the award whether or not cost-sharing was part of the unsolicited proposal.

2415.506 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded, and disposed of in accordance with FAR subpart 15.5.

(b) Unless otherwise specified in a FEDERAL REGISTER announcement unsolicited proposals should be submitted to the following contact points:

(1) *For research*—Department of Housing and Urban Development, Assistant Secretary for Policy Development and Research, Office of Management and Program Control, 451 7th Street SW., Washington, DC 20410.

(2) *For funding under the Secretary's Discretionary Fund Program*—Department of Housing and Urban Development, Assistant Secretary for Community Planning and Development, Office of Program Policy Development, 451 Seventh Street, SW., Washington, DC 20410.

(3) *For all others*—Department of Housing and Urban Development, Director, Office of Procurement and Contracts, 451 7th Street SW., Washington, DC 20410.

[49 FR 7703, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2415.6—Source Selection

SOURCE: 50 FR 46577, Nov. 8, 1985, unless otherwise noted.

2415.604 Responsibilities.

(b) The technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP) for procurements lower than $500,000. The TEP shall be composed of one or more technical personnel designated by the program or initiating office.

2415.605 Evaluation factors.

(e) Each technical evaluation factor and subfactor shall be assigned a numerical weight which shall appear in the RFP. These factors will serve as the standard against which all proposals will be evaluated.

2415.608 Proposal evaluation.

(a)(2) Technical evaluation. The TEP shall assign each proposal a score on the basis of the factors specified in the solicitation. The TEP shall identify each proposal as being either acceptable or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Predetermined cut-off scores designed to determine a threshold level of acceptability of proposals shall not be employed. A TEP report shall be prepared and signed by the technical evaluator or evaluators, furnished to the Contracting Officer, and maintained as a permanent record in the official procurement file.

(3) In addition to the documentation listed in FAR 15.608(a)(2)(i)—(iv), the TEP report shall include—

(i) The score of each proposal;

(ii) A narrative evaluation specifying the strengths and weaknesses of each proposal;

(iii) Any reservations or qualifications that may bear upon the selection of a source or sources for negotiation and award;

(iv) Specific technical reasons supporting a determination of unacceptability with respect to any proposal; and

(v) Score sheets of all TEP members.

(b) The HCA may reject all proposals received in response to a solicitation. His or her written determination shall follow FAR 15.608(b).

2415.609 Competitive range.

2415.610 Written or oral discussion.

(b) Except as provided in FAR 15.610(a), the Contracting Officer (or his or her designee) and the TEP shall conduct written or oral discussions with all responsible offerors who submit proposals within the competitive range.

2415.611 Best and final offers.

2415.611-70 Final selection.

(d) After the close of discussions and receipt of best and final offers, the TEP shall perform a final evaluation and prepare its selection recommendation or recommendations. Based on the EEP evaluation and recommendations, the Contracting Officer shall select for final contract negotiation the offeror(s) whose proposal promises the greatest value to the Government in terms of cost, technical, and other relevant factors.

2415.613 Alternative source selection procedures.

2415.613-70 Applicability.

For those procurements where the expected dollar amount will be $500,000 or more, the procedures set out in 2415.613-71 will apply. These procedures, which are more formal than those applying to procurements of less than $500,000, may also be used at the request of the funding Assistant Secretary for procurements of less than $500,000.

2415.613-71 Evaluation and negotiation of procurements.

(a) *Evaluation.* (1) Selection of the source or sources for final contract negotiations shall be made by the Source Selection Official (SSO) who is the head of the funding office, or by his or her designee. To assist the SSO in evaluating proposals and making the selection, the SSO shall designate a Source Evaluation Board (SEB) composed of a chairperson, voting members, and advisors.

(2) After the deadline for receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the SEB

chairperson or his or her designee, who shall be responsible for custody of the proposals throughout the evaluation process. The cost portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the SEB.

(3) The SEB shall evaluate each proposal in strict conformance with the requirements in 2415.608(a)(2).

(4) After the initial technical evaluation, the Contracting Officer and the SEB shall evaluate the cost portion of each proposal.

(b) *Competitive range.* Unless the SEB is prepared to recommend under FAR 15.610(a)(3) that the award be made on the basis of the most favorable initial proposal, the SEB shall establish a competitive range based upon the evaluation of all the factors for award, including cost or price.

(c) *Written or oral discussions.* The SEB shall conduct written or oral discussions with all offerors within the competitive range as required by FAR 15.610.

(d) *Final SEB Report.* After the close of discussions and receipt of any revisions to proposals and any final adjustments to proposal scores, the SEB shall prepare a written report of its findings and recommendations and submit it to the SSO for action. The report shall summarize all significant SEB actions in the solicitation and evaluation phases and shall include (in addition to the requirements in FAR 15.608(a)(2)(i)—(iv) and 2415.608(a)(2)(i)—(v)) recommendations to the SSO regarding selection in terms of: (1) A single source; (2) a number of equal sources; (3) a number of sources in descending order; or (4) options to be considered in arriving at the final decision.

(e) *Selection and final negotiation.* (1) Based upon the SEB report and the SSO's review of the matter, the SSO shall select a source or sources and document the basis for his or her selection. The SSO shall communicate these findings and selection in a memorandum to the Contracting Officer. The memorandum shall request the Contracting Officer to negotiate with the selected sources(s) and may include specific instructions and an alternate source(s) in the event the conduct of final negotiations so warrants.

(2) After receipt of the SSO's selection, the Contracting Officer shall undertake final negotiations. A proposal shall not be considered accepted or a contract awarded until final negotiations are completed with the source and a contract is executed.

Subpart 2415.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

2415.1004 Protests against award.

Protests against awards of negotiated procurements shall be processed in accordance with FAR subpart 33.1 and HUDAR subpart 2433.1

[50 FR 46578, Nov. 8, 1985]

PART 2416—TYPES OF CONTRACTS

Subpart 2416.3—Cost-Reimbursement Contracts

Sec.
2416.301 General.
2416.301-3 Limitations.

Subpart 2416.4—Incentive Contracts

2416.405 Contract clauses.
2416.504 Indefinite-quantity contracts.

Subpart 2416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.
2416.603-2 Application.

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act, (4 U.S.C. 3535(d)).

SOURCE: 49 FR 7706, Mar. 1, 1984, unless otherwise noted.

Subpart 2416.3—Cost-Reimbursement Contracts

2416.301 General.

2416.301-3 Limitations.

(c) The Head of the Contracting Activity, or designee, may approve the determinations and findings required by FAR 16.301-3(c).

Subpart 2416.4—Incentive Contracts

2416.405 Contract clauses.

(e)(1) The Contracting Officer shall insert the clauses at 2452.216-70, Estimated Cost, Base Fee, and Award Fee; 2452.216-71, Payment of Base and Award Fee; 2452.216-72, Determination of Award Fee Earned; 2452.216-73, Performance Evaluation Plan; and 2452.216-74, Distribution of Award Fee, in all award fee contracts. The Contracting Officer may modify the clauses to meet individual situations and any clause or specific requirement therein may be deleted when it is not applicable to a given contract.

[53 FR 46535, Nov. 17, 1988]

2416.504 Indefinite-quantity contracts.

(e) The Contracting Officer shall insert the clause at 2452.216-75, Unpriced Task Orders, in all indefinite-quantity contracts.

[53 FR 46535, Nov. 17, 1988]

Subpart 2416.6—Time-And-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.

2416.603-2 Application.

(c) In accordance with FAR 16.603-2(c), a letter contract shall be made definite within 180 days of the date of award or after completion of 40 percent of the work to be performed, whichever occurs first, unless different terms are approved in advance by the Head of the Contracting Activity.

PART 2417—SPECIAL CONTRACTING METHODS

AUTHORITY: Economy Act (31 U.S.C. 1535); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

(b) The Contracting Officer shall use HUD Form 730, Award/Modification of Interagency Agreement, when placing or modifying an order for supplies or services from another Government agency.

[53 FR 46535, Nov. 17, 1988]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2419.2—Policies

Sec.
2419.201 General policy.
2419.201-70 Regional Small Business Specialist.

Subpart 2419.5—Set-Asides for Small Business

2419.503 Setting aside a class of acquisitions.

Subpart 2419.9—Contracting Opportunities for Women-Owned Small Business

2419.901 Policy.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2419.2—Policies

2419.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Headquarters, is responsible for the administration of the HUD small and small disadvantaged business programs. This includes Department-wide responsibility for developing, implementing, executing, and managing these programs, providing advice on these programs, and representing HUD before other government agencies on matters primarily affecting small and small disadvantaged businesses.

(d) Each head of a contracting activity shall designate a small business/small disadvantaged business specialist who shall perform the following functions:

(1) Maintain a program designed to locate capable small/small disadvantaged business sources for current and future procurements;

(2) Coordinate inquiries and requests for advice from small/small disadvantaged business concerns on procurement matters;

(3) Review proposed requirements for supplies and services, ensure that small/small disadvantaged business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendation for small business or Section 8a set-asides (under the Small Business Act);

(4) Take action to ensure the availability of adequate specifications and drawings, when necessary, to obtain small/small disadvantaged business participation in a procurement;

(5) Review proposed procurements for possible breakout of items suitable for procurement from small/small disadvantaged business concerns;

(6) Advise small/small disadvantaged business concerns with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(7) Ensure that adequate records are maintained and accurate reports are prepared concerning small/small disadvantaged business participation in the procurement program;

(8) Make available to SBA copies of solicitations, when requested, and

(9) Act as liaison between the Contracting Officer and the appropriate SBA office in connection with set-asides, certificates of competency, size classification, and any other matter in which the small/small disadvantaged business program may be involved.

[49 FR 7706, Mar. 1, 1984, as amended at 50 FR 46578, Nov. 8, 1985]

2419.201-70 Regional Small Business Specialist.

Each Regional Administrator shall designate a Regional Small Business Specialist, who shall coordinate and monitor the activities of the small business/small disadvantaged business specialists designated by each Head of a Contracting Activity, as provided in paragraph (d) of 2419.201.

[50 FR 46578, Nov. 8, 1985]

Subpart 2419.5—Set-Asides for Small Business

2419.503 Setting aside a class of acquisitions.

(e) *Class set-aside for construction under the Acquired Property Program.* A class set-aside is hereby made for each proposed procurement for construction under the Acquired Property Program with an estimated cost of less than $1,000,000. Accordingly, Contracting Officers shall set aside for small business each such proposed procurement. If a Contracting Officer determines that any individual procurement falling within the class set-aside requirements of this section is unsuitable for such a set-aside in part or in total, the set-aside may be withdrawn with the concurrence of the Head of the Contracting Activity. Proposed procurements for construction which exceed an estimate of $1,000,000 shall be considered for set-aside on a case-by-case basis.

[49 FR 7706, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 53 FR 46535, Nov. 17, 1988]

Subpart 2419.9—Contracting Opportunities for Woman-Owned Small Businesses

2419.901 Policy.

Executive Order 12138, May 18, 1979 (44 FR 29637, 3 CFR, 1979 Comp., P. 890) directs agencies to take appropriate action to facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system. The Office of Small and Disadvantaged Business Utilization is responsible for establishing Department-wide goals for awards to women-owned businesses and monitoring and reporting progress against those goals.

[49 FR 7706, Mar. 1, 1984]

PART 2420—LABOR SURPLUS AREA CONCERNS

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7707, Mar. 1, 1984, unless otherwise noted.

Subpart 2420.1—General

2420.102 General policy.

It is the policy of the Department to award appropriate contracts to eligible labor surplus area (LSA) concerns and encourage contractors to place subcontracts with LSA concerns. Policies and procedures with regard to the LSA program are set forth in FAR part 20. The Office of Small and Disadvantaged Business Utilization is responsible for establishing Department-wide goals for the LSA program and monitoring and reporting progress against those goals.

PART 2422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46535, Nov. 17, 1988, unless otherwise noted.

Subpart 2422.14—Employment of the Handicapped

2422.1408 Contract clause.

(c) The Contracting Officer shall insert the clause at 2452.222-70, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in all solicitations and contracts.

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2424.1—Protection of Individual Privacy Procedures

Sec.
2424.103 Procedures.

Subpart 2424.2—Freedom of Information Act

2424.202 Policy.
2424.202-70 Solicitation provision.

AUTHORITY: Freedom of Information Act (5 U.S.C. 552); Privacy Act of 1974 (5 U.S.C. 552a); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2424.1—Protection of Individual Privacy

2424.103 Procedures.

(b)(2) See 24 CFR part 16 for the HUD regulations which implement the Privacy Act.

Subpart 2424.2—Freedom of Information Act

2424.202 Policy.

See 24 CFR part 15 for the HUD regulations which implement the Freedom of Information Act.

2424.202-70 Solicitation provision.

The Contracting Officer shall insert the provisions at 2452.224-70, Freedom of Information Act Notification, in all negotiated solicitations exceeding the small purchase limitation.

[53 FR 46536, Nov. 17, 1988]

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

Subpart 2426.1—Minority Business Enterprises

2426.101 Policy.
2426.102 Responsibility.
2426.103 Solicitation provision.

Subpart 2426.2—Historically Black Colleges and Universities

2426.201 Policy.

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

Subpart 2426.1—Minority Business Enterprises

2426.101 Policy.

It is the policy of the Department to foster and promote Minority Business Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission. A "minority business enterprise" is a business which is at least 51 percent owned by one or more minority group members; or, in case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members are Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.

2426.102 Responsibility.

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) develops Departmental MBE plans and policies in accordance with Executive Orders 11625 and 12432 and by directive from the Secretary. He or she provides advice and guidance to the Secretary and Primary Organization Heads on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals, monitors and evaluates the Department's MBE program, and reports on MBE program performance to the Department of Commerce.

2426.103 Solicitation provision.

All contracting activities shall request all interested contractors, bidders, or offerors (including those responding to requests for quotations) to complete the certification at 2452.226-70, Certification of Status as a Minority Business Enterprise. Completion of this certification is voluntary and is not a condition of eligibility for contract award.

Subpart 2426.2—Historically Black Colleges and Universities

2426.201 Policy.

Executive Order 12320, September 15, 1981 ((46 FR 46107), 3 CFR 1981 Comp., P.176), directed the Department to establish annual plans to increase the ability of Historically Black Colleges and Universities to participate in Federally sponsored programs including contracts, grants and cooperative agreements. OSDBU is responsible for developing the annual plans regarding the participation of Historically Black Colleges and Universities in Departmental programs. OSDBU is responsible also for ensuring that the reporting requirements are fulfilled.

PART 2427—PATENTS, DATA, AND COPYRIGHTS

Subpart 2427.3—Patent Rights Under Government Contracts

Sec.
2427.305 Administration of patent rights clauses.
2427.305-2 Follow-up by contractor.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

Subpart 2427.3—Patent Rights Under Government Contracts

2427.305 Administration of patent rights clauses.

2427.305-2 Follow-up by contractor.

(b) Contractor reports. Contractors shall complete and submit to the Contracting Officer HUD Form 770, Report of Inventions and Subcontracts, upon receipt of said form. The Contracting Officer shall send the form to those contractors whose contract work may have required the development of inventions upon physical completion of the contract.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2428—BONDS AND INSURANCE

Subpart 2428.1—Bonds

Sec.
2428.106 Administrative.
2428.106-6 Furnishing information.

Subpart 2428.2—Sureties

2428.203 Options in lieu of sureties.
2428.203-70 Irrevocable letter of credit.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 50 FR 46578, Nov. 8, 1985, unless otherwise noted.

Subpart 2428.1—Bonds

2428.106 Administrative.

2428.106-6 Furnishing information.

(c) The HCA shall furnish the certified copy of the bond and the contract for which it was given to any person who requests them in accordance with FAR 28.106-6.

Subpart 2428.2—Sureties

2428.203 Options in lieu of sureties.

2428.203-70 Irrevocable letter of credit.

In addition to the options provided in FAR 28.203, any person or organization required to furnish a bond in connection with a contract under the Acquired Property Program (see 2401.601-71) has the option of furnishing an irrevocable letter of credit instead of furnishing surety or sureties on the bonds.

PART 2429—TAXES

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2429.1—General

2429.101 Resolving of tax problems.

In order to have uniformity in HUD's treatment of the tax aspects of contracting and ensure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within HUD for handling all those tax problems. Therefore, the contracting activity will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the Contracting Officer shall request in writing the Office of General Counsel's assistance. The request shall detail the problem and be accompanied by appropriate backup data. The Office of General Counsel shall report to the Contracting Officer as to the necessary disposition of the tax problem. The Contracting Officer will notify the contractor of the outcome of the tax problem. The Office of General Counsel shall have the responsibility for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

[49 FR 7708, Mar. 1, 1984]

PART 2432—CONTRACT FINANCING

Subpart 2432.4—Advance Payments

Sec.
2432.402 General.

Subpart 2432.9—Prompt Payment

2432.908 Contract clauses.

AUTHORITY: Prompt Payment Act (31 U.S.C. 3901-3906); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

Subpart 2432.4—Advance Payments

2432.402 General.

(e)(1) The Determination and Findings required by FAR 32.402(c)(1)(iii) shall be made by the Director, Office of Procurement and Contracts.

(2) Each advance payment situation shall be coordinated with the Office of Finance and Accounting before authorization may be given.

Subparty 2432.9—Prompt Payment

2432.908 Contract clauses.

(a) The Contracting Officer shall insert the clause at 2452.232-70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts. The clause with its Alternate I shall be used for solicitations and contracts issued by the Regional Contracting Officers.

(b) The Contracting Officer shall insert the clause at 2452.232-71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office. The clause with its Alternate I shall be used for solicitations and contracts issued by the Regional Contracting Officers.

PART 2433—PROTESTS, DISPUTES, AND APPEALS

Sec.
2433.000 Scope of part.

Subpart 2433.1—Protests

2433.101-70 Definitions.
2433.102 General.
2433.102-70 Responsibility.
2433.103 Protests to the agency.
2433.103-70 Times for filing
2433.103-71 Agency decision.
2433.104 Protests to GAO.
2433.104-70 Notice to GAO on protests filed under the Acquired Property Program.
2433.105 Protests to GSBCA.

AUTHORITY: Competition in Contracting Act of 1984 (31 U.S.C. 3551-3556); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 50 FR 46578, Nov. 8, 1985, unless otherwise noted.

2433.000 Scope of part.

This part identifies the responsible agents and sets forth procedural requirements for handling protests.

[51 FR 40333, Nov. 6, 1986]

Subpart 2433.1—Protests

2433.101-70 Definitions.

Working day, as used in this part, means a working day of the Agencies of the Federal Government, excluding Saturdays, Sundays, and Federal holidays, as specified in 5 U.S.C. 6103.

2433.102 General.

2433.102-70 Responsibility.

The Office of General Counsel has responsibility for handling matters relating to protests filed with the General Accounting Office (GAO) or the General Services Board of Contract Appeals (GSBCA) against award of contracts by the Department. All written communications from the Department to the GAO or the GSBCA shall be by the Office of General Counsel. The Contracting Officer has responsibility for furnishing the Office of General Counsel with all information relating to a protest.

2433.103 Protests to the agency.

(a) When the Contracting Officer makes a determination to award a contract notwithstanding a protest, as authorized by FAR 33.103(a)(1)-(3), that determination shall be approved by the HCA before the award, after consultation with the Office of General Counsel.

(b)(2) Protests received after award that are filed only with the Department shall be decided promptly by the Contracting Office after consultation with appropriate officials, including the program office and the Office of General Counsel.

2433.103-70 Times for filing.

The times for filing a protest filed only with the Department shall be consistent with GAO requirements at 4 CFR part 21.

2433.103-71 Agency decision.

The Contracting Officer shall issue, in writing, his or her final decision on a protest within 20 working days from the date of receipt of the protest by the Department. If it is determined that it is desirable to solicit the views of GAO, the time for rendering a decision shall be 10 working days after the Department's receipt of GAO's views, but not later than 30 working days after the Department receives the protest.

2433.104 Protests to GAO.

(a)(1) *General.* When advised by GAO of the receipt of a protest, the Office of General Counsel shall immediately inform the contracting activity. The Contracting Officer shall notify the Office of General Counsel upon receipt of the copy of the protest from the protestor.

(2) Upon receipt by the Department of a written request for a formal report relating to a protest, the Office of General Counsel, with appropriate assistance from the Contracting Officer, shall prepare and file the report in accordance with GAO requirements at 4 CFR part 21.

(c) *Protests after award.* Protests received after award shall be treated in the same manner as those filed with GAO before award in accordance with paragraphs (a)(1) and (a)(2) of this section.

(d) *Findings and notice.* When the Contracting Officer makes a determination to award a contract notwithstanding a protest as authorized by FAR 33.104(b)(1)(i-ii), or to continue contractor performance as authorized by FAR 33.104(c)(2), that determination of the intent to make an award or to continue contract performance shall be approved by the HCA after consultation with the Office of General Counsel.

(f) *Notice to GAO.* If the HCA proposes not to comply with a GAO recommendation concerning the resolution of a protest of a procurement award, prior to reporting to the Comptroller General concerning that decision, the HCA shall obtain the concurrence of the Office of General Counsel and the Senior Procurement Executive.

[50 FR 46578, Nov. 8, 1985, as amended at 51 FR 40333, Nov. 6, 1986]

2433.104-70 Notice to GAO on protests filed under the Acquired Property Program.

With respect to protests filed under the Office of Housing's Acquired Property Program, the HCA shall notify the Reconditioning and Contracting Branch, Office of Multifamily Housing Management in the event that he or she proposes not to comply with a GAO recommendation concerning the resolution of a protest. The notification shall be in writing, shall include supporting documentation and a rationale, and shall be submitted to the Reconditioning and Contracting Branch within 30 days from the date of the Department's receipt of GAO's decision. The Reconditioning and Contracting Branch shall obtain the concurrence of the Office of General Counsel and the Senior Procurement Executive. The Chief, Reconditioning and Contracting Branch shall then notify the Comptroller General of the Department's decision not to comply with GAO's recommendation.

[51 FR 40333, Nov. 6, 1986]

2433.105 Protests to GSBCA.

(d)(2) The Determination and Findings (D&F) establishing the circumstances for not suspending the Department's procurement authority shall be executed by the Assistant Secretary for Administration.

[51 FR 40333, Nov. 6, 1986]

PART 2434—MAJOR SYSTEM ACQUISITIONS

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2434.001 Definition.

(b) The Department's dollar threshold for a "major system", under OMB Circular A-109, "Major System Acquisitions", is $15,000,000. The Senior Procurement Executive may, however, designate any acquisition as a "major system acquisition" if its priority to the Department's overall mission warrants such emphasis or may waive the requirements of the Circular if an acquisition exceeds $15,000,000, but does not otherwise meet the definition of a major system.

[53 FR 46537, Nov. 17, 1988]

2434.003 Responsibilities.

(a) The Senior Procurement Executive is responsible for establishing written procedures for implementation of A-109. Such procedures have been set out in internal Departmental directives.

[53 FR 46537, Nov. 17, 1988]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2436.6—Architect-Engineer Services

Sec.
2436.602 Selection of firms for architect-engineer contracts.
2436.602-2 Evaluation boards.
2436.602-4 Selection authority.
2436.602-5 Short selection processes for contracts not to exceed $10,000.

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2436.6—Architect-Engineer Services

2436.602 Selection of firms for architect-engineer contracts.

2436.602-2 Evaluation boards.

(a) Each architect-engineer evaluation board, whether permanent or ad hoc, shall consist of at least three voting members who are Federal employees from the appropriate program area or from Federal offices outside the program area as appropriate. One member of each board shall be appointed Chairperson. Three (3) alternate members who are Federal employees shall also be appointed, but at any given time the majority of voting members shall be from the program area concerned. The members of a permanent board shall be appointed for a period of two years. Appointment shall be made by the following authorities with copies of appointment memoranda furnished to the appropriate contracting activity:

(1) *Assistant Secretary* or equivalent for boards appointed at the Headquarters level;

(2) *Field Office Manager* for boards appointed at the Field Office level.

(c) *Conflict of interest.* Each board member, whether voting or nonvoting, shall become familiar with those provisions of 24 CFR, subtitle A, part O, Housing and Housing Credit regulations regarding conflicts of interest. If at any time during the selection process a board member encounters a situation with one or more of the firms being considered that might be or might appear to be a conflict of interest, he or she will disqualify him or herself and call it to the attention of the Chairperson for resolution and proper action. The Chairperson will refer the matter to the Office of General Counsel.

(d) *Confidentiality.* The evaluation board is to be insulated from outside pressures, to the extent practical. No person having knowledge of the activities of the board shall divulge information concerning the deliberations of the board to any other persons not having a need to know such information.

2436.602-4 Selection authority.

(a) The final selection decision shall be made by the appropriate Primary Organization Head (Headquarters) or the appropriate Field Office Manager (Field).

2436.602-5 Short selection processes for contracts not to exceed $10,000.

The short selection process described in FAR 36.602-5(a) is authorized for use for contracts not expected to exceed $10,000.

[49 FR 7708, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984]

PART 2437—SERVICE CONTRACTING

Subpart 2437.1—Service Contracts-General

2437.101 Definitions.
2437.110 Solicitation provisions and contract clauses.

Subpart 2437.2—Consulting Services

2437.205 Management controls.

AUTHORITY: Sec. 205(c) of the Federal Procurement and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2437.1—Service Contracts—General

2437.101 Definitions.

Government Technical Representative (GTR) means that individual responsible for the technical direction, oversight, and evaluation of the Contractor's performance.

[53 FR 46537, Nov. 17, 1988]

2437.110 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause at 2452.237-70, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor Key personnel.

(b) The Contracting Officer shall insert the clause at 2452.237-71, Reproduction of Reports, in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

(c) The Contracting Officer shall insert the clause at 2452.237-72, Coordination of Data Collection Activities, in solicitations and contracts where the Contractor is required to collect information from ten or more public respondents.

(d) The Contracting Officer shall insert the clause at 2452.237-73, Conduct of Work, in all service contracts.

(e) The Contracting Officer shall insert the clause at 2452.237-74, Technical Direction, in all cost-reimbursement solicitations and contracts for services.

(f) The Contracting Officer shall insert the clause at 2452.237-75, Clearance of Personnel, in all solicitations and contracts where Contractor personnel will be working on-site in any HUD office. Contractors shall be required to complete Forms FD-258, "Fingerprinting Charts" and GSA-176, "Statement of Personal History."

[53 FR 46537, Nov. 17, 1988]

Subpart 2437.2—Consulting Services

2437.205 Management controls.

(b)(6) Any proposed contract for consulting services that exceeds the small purchase limitation requires review and approval by the Procurement Review Board (PRB) at Headquarters or in the cognizant Regional Office. Criteria for PRB review and approval of contracts for consulting services are published in internal HUD directives and are consistent with FAR 37.205(b).

(7) PRB review is equivalent to the reviews required by FAR 37.205(b) (6) and (7).

(8) A copy of the PRB's written approval of the proposed contract action shall be maintained in the official contract file.

[50 FR 46579, Nov. 8, 1985]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2442—CONTRACT ADMINISTRATION

Subpart 2442.7—Indirect Cost Rates

Sec.
2442.705 Final indirect cost rates.
2442.705-70 Contract clause.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.
2442.1107 Contract clause.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46537, Nov 17, 1988, unless otherwise noted.

Subpart 2442.7—Indirect Cost Rates

2442.705 Final indirect cost rates.

2442.705-70 Contract clause.

The Contracting Officer shall insert the clause at 2452.242-70, Indirect Costs, in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.

(a) All contracts for professional or technical services exceeding $100,000.00 shall use HUD Form 441.1, "Project Management System Baseline Plan," to outline how the Contractor proposes to carry out the contract work and HUD Form 661.1, "Project Management System Progress Report," to monitor quantitative progress against the baseline plan. Each of these forms shall be accompanied by a narrative description. The Contracting Officer may waive the requirement to use these forms if he or she believes the Statement of Work or contractor's technical proposal are sufficiently specific or another acceptable means for project management is substituted. Contracts awarded under the Acquired Property Program are exempt from use of this reporting requirement.

2442.1107 Contract clause.

The Contracting Officer shall insert the clause at 2452.242-71, Project Management System, in solicitations and contracts for professional or technical services exceeding $100,000 unless the Contracting Officer determines that the Statement of Work or technical proposal is sufficiently specific or another acceptable method for project management is substituted.

PART 2446—QUALITY ASSURANCE

Subpart 2446.5—Acceptance

Sec.
2446.502 Responsibility for acceptance.
2446.502-70 Contract clause.

Subpart 2446.6—Material Inspection and Receiving Reports [Note]

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46537, Nov. 17, 1988, unless otherwise noted.

Subpart 2446.5—Acceptance

2446.502 Responsibility for acceptance.

2446.502-70 Contract clause.

The Contracting Officer shall insert the clause at 2452.246-70, Inspection and Acceptance, in solicitations and contracts unless inspection and acceptance will be performed by someone other than the Government Technical Representative (GTR).

Subpart 2446.6—Material Inspection and Receiving Reports

NOTE: Inspection of contractor's performance shall be performed as often as necessary to protect HUD's interest. HUD Form

519, Acquired Property Inspection Report, shall be used to document inspection and acceptance for work performed on properties under the Acquired Property Program. Distribution shall be as indicated on the form.

PART 2449—TERMINATION OF CONTRACTS

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2449.1—General Principles

2449.111 Review of proposed settlements.

The Head of the Contracting Activity shall establish internal procedures to ensure the independent review of proposed termination settlements in excess of $100,000.

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46538, Nov. 17, 1988, unless otherwise noted.

Subpart 2451.3—Contractor Use of Government Discount Air Passenger Transportation Rates

2451.303 Contract clause.

The Contracting Officer shall insert the clause at 2452.251-70, Contractor Employee Travel, in all cost-reimbursement contracts involving airline travel.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2452.2—Texts of Provisions and Clauses

Sec.

2452.209-70 Organizational conflicts of interest notification.
2452.209-71 Organizational conflicts of interest certification.
2452.209-72 Organizational conflicts of interest.
2452.212-70 Contract period.
2452.215-70 Proposal content and outline.
2452.215-71 DUNS Contractor establishment number.
2452.216-70 Estimated cost, base fee, and award fee.
2452.216-71 Payment of base and award fee.
2452.216-72 Determination of award fee earned.
2452.216-73 Performance evaluation plan.
2452.216-74 Distribution of award fee.
2452.216-75 Unpriced task orders.
2452.222-70 Accessibility of meetings, conferences, and seminars to persons with disabilities.
2452.224-70 Freedom of Information Act notification.
2452.226-70 Certification of status as a minority business enterprise.
2452.232-70 Payment schedule and invoice submission (fixed-price).
2452.232-70 Payment schedule and invoice submission (fixed-price)—Alternate I.
2452.232-71 Voucher submission (cost-reimbursement).
2452.237-70 Key personnel.
2452.237-71 Reproduction of reports.
2452.237-72 Coordination of data collection activities.
2452.237-73 Conduct of work.
2452.237-74 Technical direction.
2452.237-75 Clearance of personnel.
2452.242-70 Indirect costs.
2452.242-71 Project management system.
2452.246-70 Inspection and acceptance.
2452.251-70 Contractor Employee Travel.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46538, Nov. 17, 1988, unless otherwise noted.

Subpart 2452.2—Texts of Provisions and Clauses

2452.209-70 Organizational conflicts of interest notification.

As prescribed in 2409.508-1, insert the following solicitation provision in all solicitations.

ORGANIZATIONAL CONFLICT OF INTEREST NOTIFICATION (FEB 1987)

(a) It is the Department of Housing and Urban Development's policy to avoid situations which place an offeror in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to this solicitation or where the offeror's performance of such work may provide it with an unfair competitive advantage.

(b) Offerors shall provide a statement which describes in a concise manner all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the offeror has a possible organizational conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict. (Offerors should refer to FAR subpart 9.5 and HUDAR subpart 2409.5 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest).

(c) In the absence of any relevant interests referred to above, the offeror shall complete the certification at 2452.209-71, Organizational Conflicts of Interest Certification.

(d) No award shall be made until the disclosure or certification has been evaluated by the Contracting Officer. Failure to provide the disclosure or certification will be deemed to be a minor infraction and the offeror will be permitted to correct the omission within a time frame established by the Contracting Officer.

(e) Refusal to provide the disclosure or certification and any additional informatio as required, or the willful nondisclosure or misrepresentation of any relevant information shall disqualify the offeror.

(f) If the Contracting Officer determines that a potential conflict exists, the selected offeror shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

2452.209-71 Organizational conflict of interest certification.

As prescribed in 2409.508-1, insert the following solicitation provision in all solicitations.

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATION (APR 1984)

The bidder or offeror certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed Government contract and the bidder or offeror's organizational, financial, contractual or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the offeror; or

(b) Impair the offeror's objectivity in performing the contract work.

☐ In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to

Offeror(s) or Bidder(s) ____________________

possible performance of this procurement.

(End of provision)

2452.209-72 Organizational conflicts of interest.

As prescribed in 2409.508-2, insert the following contract clause in all contracts.

ORGANIZATIONAL CONFLICTS OF INTEREST (APR 1984)

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a Government contract and a Contractor's organizational, financial, contractual or other interests are such that:

(1) Award of the contract may result in an unfair competitive advantage; or

(2) The Contractor's objectivity in performing the contract work may be impaired.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict.

The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

(End of clause)

2452.212-70 Contract period.

As prescribed in 2412.104(a), insert the following clause in all term form cost-reimbursement and fixed-price service solicitations and contracts.

CONTRACT PERIOD (APR 1984)

The Contractor shall complete all work hereunder, including delivery of the final report, if required, within ________ months from the effective date of the contract.

(End of clause)

2452.215-70 Proposal content and outline.

As prescribed in 2415.407(a), insert the following solicitation provision in all solicitations over the small purchase limitation

PROPOSAL CONTENT AND OUTLINE (APR 1984)

(a) Proposals shall be submitted in two separate parts as further described below and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The envelope must show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror. Part I shall consist of the technical and management submittal of the proposed work. Part II shall consist of complete cost and pricing

best copy available

pages tightly bound

data. Each part of the proposal shall be complete in itself so that the evaluation of both parts can be accomplished concurrently, and the evaluation of the technical and management submittal can be made strictly on the basis of its merit.

(b) *Part I—Technical and Management.*

Section 1: *Proposal Coverage.* Cover the scope of work and general objectives which the proposal addresses.

Section 2: *Tasks and Methods.* Describe the principal tasks or sub-projects to be undertaken together with a discussion of their relationships to each other. Discuss the considerations for selecting, performing and the time sequencing of the tasks or subprojects. Describe and discuss the method of personnel training and field personnel recruitment and the method of project control to be applied to the project to ensure timely, professional and quality performance. The Contractor must clearly state his/her plans for project management and in providing current and updated project progress to HUD during those phases of Contractor performance that require substantial coordination with HUD personnel.

Section 3: *Organization and Staffing.* Include an organizational chart for the project showing the name of the project manager and the names of key personnel. Include a brief resume for each person shown on the special qualifications applicable to the performance of the project. Describe the specific effort to be contributed to the project by each of the key personnel and include a statement expressed either in percentage or person-hours that each will devote to the effort. Include a summation of the minimum person-hours or person-months of professional effort to be used in completing the project. Describe the physical facilities to be used. If consultants, advisors or subcontractors are to be used, describe the arrangements and include resumes of the key personnel.

Section 4: *Prior and Current Experience.* Include a list of projects currently in progress and completed within the last two years which are relevant to this procurement. Include names, addresses and telephone numbers of contact points with these clients. The Government reserves the right to request information from any source so named.

Section 5: *Conflicting or Multiple Use of Contractor Resources.* Include a description of the contractor's current or planned projects that may draw upon resources or personnel, including top management, proposed to be committed to this project. Explain how such conflicting or multiple uses will be resolved to avoid impairing the timely, professional, and high-quality performance of this project. If the proposer has one or more existing HUD projects that will run concurrently with this project, explain how the level of attention described in the proposal will be preserved across projects.

The Government reserves the right to downgrade the related Factor for Award score for any proposal that does not adequately and credibly address such conflicts or multiple uses.

(c) *Part II—Cost and Pricing Data.*

Furnish cost or pricing data using the forms provided in Part III, Section J of this solicitation, SF-1411, Contract Pricing Proposal. Instructions for using that form are also in Section J. Round all amounts to the nearest dollar. Also execute the "Certifications and Representations" included in Part IV, Section K, and, where appropriate, a "Certification of Current Cost or Pricing Data". Furnish the names and telephone number of the Government audit organization having cognizance of your activity.

(d) Proposals shall be submitted in six (6) copies each of Part I and II.

(End of provision)

2452.215-71 DUNS contractor establishment number.

As prescribed in 2415.407(b), insert the following solicitation provision in all solicitations which exceed the small purchase limitation.

DUNS Contractor Establishment Number
(Apr 1984)

Offerors or Bidders are required to complete the following for all solicitations which exceed the small purchase limitation. DUNS Contractor Establishment Number –

____

(End of provision)

2452.216-70 Estimated cost, base fee, and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Estimated Cost, Base Fee, and Award Fee
(Apr 1984)

The estimated cost of this contract is $ (Insert Amount). A base fee of $ (Insert Amount) is payable in accordance with the clause entitled Payment of Base and Award Fee. In addition, a maximum Award Fee of $ (Insert Amount) is available for payment in accordance with the clause entitled Payment of Base and Award Fee.

(End of clause)

2452.216-71 Payment of base and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Payment of Base and Award Fee (Aug 1987)

(a) *Base Fee.* The Government will make payment of the base fee in (insert number) increments on the schedule set forth in the Performance Evaluation Plan established by the Government. The amount payable shall be based on the progress toward completion of contract tasks as determined by the Contracting Officer. Payment of the base fee is subject to any withholdings as provided for elsewhere in this contract.

(b) *Award Fee.* The Government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

(End of clause)

2452.216-72 Determination of award fee earned.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Determination of Award Fee Earned (Aug 1987)

(a) At the conclusion of each evaluation period specified in the Performance Evaluation Plan, the Government shall evaluate the contractor's performance and determine the amount, if any, of award fee earned by the contractor. The amount of award fee to be paid will be determined by the designated Fee Determination Official's (FDO) judgmental evaluation in accordance with the criteria set forth in the Performance Evaluation Plan. This decision is made unilaterally by the Government and is not subject to the disputes clause or the provisions of the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.* In reaching this decision, the FDO may consider any justification of award fee the Contractor submits, provided that the justification is submitted within (*insert number*) days after the end of an evaluation period. The FDO determination shall be in writing, shall set forth the basis of the FDO's decision, and shall be sent to the Contractor within (*insert number*) days after the end of the evaluation period.

(b) The FDO may specify in any fee determination that fee not earned during the period evaluated may be accumulated and be allocated for award during a later evaluation period. The Distribution of Award Fee clause shall be amended to reflect the allocation.

(End of clause)

2452.216-73 Performance evaluation plan.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Performance Evaluation Plan (Aug 1987)

(a) The Government shall unilaterally establish a Performance Evaluation Plan that will provide the basis for the determination of the amount of award fee awarded under the contract. The Plan shall set forth evaluation criteria and percentage of award fee available for (1) technical functions, including schedule requirements if appropriate, (2) management functions; and, (3) cost functions. The Government shall furnish a copy of the Plan to the Contractor (*insert number*) days before the start of the first evaluation period.

(b) The Government may initially revise the Performance Evaluation Plan at any time during the contract term. The Contractor shall be notified at least (*insert number*) days before the start of the evaluation period to which the change will apply.

(End of clause)

2452.216-74 Distribution of award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Distribution of Award Fee (Apr 1984)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period: ________________

Available Award Fee: ________________

(b) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a prorata distribution associated with evaluation period activities or events as deteremined by the Fee Determination Official as designated in the contract. The contract clauses required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(1) The term "base fee and award fee" should be substituted for "fixed-fee" where it appears in the clause at FAR 52.243-2, Changes.

(2) The term "base fee" should be substituted for "fee" where it appears in the clauses at FAR 52.232-20, Limitation of

Costs, and FAR 52.232-22, Limitation of Funds.

(3) The phrase "base fee, if any, and such additional fee as may be awarded as provided for in the Schedule"; should be substituted for the term "fee" whenever it appears in the clause at FAR 52.216-7, Allowable Cost and Payment.

(End of clause)

2452.216-75 Unpriced task orders.

As prescribed in 2416.504(e), insert the following clause in all indefinite-quantity contracts.

UNPRICED TASK ORDERS (APR 1984)

(a) Although it is anticipated that the Government and the Contractor will reach agreement on the total cost and fee or profit (if applicable) for the effort to be undertaken, prior to the issuance of a Task Order, there may be occasions when the Government wishes to authorize commencement of work prior to agreement on price. If this is the case, a Task Order may be issued which provides that the Contractor shall immediately commence performance of the services specified in the order, and shall submit a pricing proposal within fifteen days of receipt of the Task Order. Upon negotiations of the cost, a supplemental agreement shall be executed to make specific all terms and conditions of the Task Order. Failure to agree for costs ordered under this procedure shall be considered a dispute within the meaning of the clause of this contract entitled Disputes.

(b) Unpriced Task Orders shall indicate a "not-to-exceed" amount for the order; however, such amount shall not exceed 50 percent of the estimated cost of the Task Order. The Task Order shall only require the Contracting Officer's signature, but shall comply with all other Task Order requirements.

(End of clause)

2452.222-70 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 2422.1408(c), insert the following clause in all solicitations and contracts.

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (JUL 1988)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

2452.224-70 Freedom of Information Act notification.

As prescribed in 2424.202-70, insert the following provision in all solicitations.

FREEDOM OF INFORMATION ACT NOTIFICATION (APR 1984)

Proposals submitted in response to this solicitation are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether or not to release information contained in a proposal in the event a FOIA request is received, offerors may, through clear earmarking or otherwise, indicate those portions of their proposals which they believe should not be disclosed. While an offeror's advice will be considered by the Department in its determination whether to release requested information or not, it must be emphasized that the Department is required by the FOIA to make an independent evaluation as to the information, notwithstanding the offeror's views. It is suggested that if an offeror believes that confidential treatment is appropriate, the basis for this view should be provided, where possible, because general assertions or blanket requests for confidentiality, without more information, are not particularly helpful to the Department in making determinations concerning the release of information under the Act. It should also be noted that the Department is required to segregate disclosable information from non-disclosable items, so particular care should be taken in the identification of each portion of which confidential treatment is requested. Offeror's views concerning confidentiality will be used to aid the Department in preparing its response to FOIA requests. Further, offerors should note that the presence or absence of such comments or earmarking regarding confidential information will have no bearing whatsoever on the evaluation of proposals submitted pursuant to this solicitation, nor will the absence of this earmarking automatically result in greater disclosure.

(End of provision)

2452.226-70 Certification of status as a minority business enterprise.

As prescribed in 2426.103, insert the following solicitation provision in all solicitations.

CERTIFICATION OF STATUS AS A MINORITY BUSINESS ENTERPRISE (JUN 1988)

[ ] Bidder, Offeror or Supplier certifies that he or she [ ] is, [ ] is not, (check one), a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the box applicable to you)

[ ] Black Americans
[ ] Hispanic Americans
[ ] Native Americans
[ ] Asian Pacific Americans
[ ] Asian Indian Americans
[ ] Hasidic Jewish Americans

(End of Provision)

2452.232-70 Payment schedule and invoice submission (fixed-price).

As prescribed in 2432.908(a), insert the following clause in all fixed price solicitations and contracts.

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (MAR 1988)

(a) *General.* The Government shall pay the Contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Part I, Section B of this contract.

(USE PARAGRAPH (b) ONLY IF PARTIAL PAYMENTS APPLY. OTHERWISE PARAGRAPH (a) ABOVE ASSUMES THE CONTRACTOR WILL BE PAID THE FULL AMOUNT UPON COMPLETION OF LL CONTRACT REQUIREMENTS)

(b) *Payment Schedule.* Payments will be nade in accordance with the following paral payment schedule:

Partial payment number	Specific deliverable	Delivery date	Payment amount
1. [ ] 2. [ ] 3. [ ]			

(Continue as necessary)

c) *Submission of Invoices.* Invoices shall submitted in an original and three (3) ies to the payment office identified in ck 12 of the SF-26 or Block 25 of the SF-33. To constitute a proper invoice, the invoice must include all items per FAR 52.232-25, "Prompt Payment."

To assist the Government in making timely payments, the Contractor is also requested to identify the appropriation number (from Block 14 if award is made on the SF-26 or Block 21 if award is made on the SF-33) on each invoice. The Contractor is also requested to identify on the envelope that an invoice is enclosed.

(d) *Contractor Remittance Address.* Payment shall be made to the Contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(Insert appropriate address)

(End of clause)

ALTERNATE I (MAR 1988)

This alternate is required for all fixed-price contracts issued by Regional Contracting Officers. In such cases, substitute the following paragraph (c) for that in the basic clause:

(c) Invoices shall be submitted in an original and three (3) copies to the office identified in Block 5 of the SF-26 or Block 7 of the SF-33. To constitute a proper invoice, the invoice must include all items per FAR 52.232-25, "Prompt Payment."

2452.232-71 Voucher submission (cost-reimbursement).

As prescribed in 2432.908(b), insert the following clause in all cost-reimbursement solicitations and contracts.

VOUCHER SUBMISSION (COST-REIMBURSEMENT) (MAR 1988)

(a) The Contractor shall submit, on a monthly basis (Contracting Officer may substitute a different time frame, if appropriate), an original and two (2) copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment," the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be distributed as follows, except for the final voucher which shall be submitted in all copies to the Contracting Officer.

Interim vouchers	Attention of	Address shown on face of contract in block
Original	Voucher Examiner	12
One copy	Contracting Officer	5
One copy	GTR	11

To assist the Government in making timely payments, the Contractor is requested to identify the appropriation number (from Block 14 of the SF 26) on each voucher. The Contractor is also requested to identify on the envelope that a voucher is enclosed.

(b) Contractor Remittance Address.

Payment shall be made to the Contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(Insert appropriate address)

(End of clause)

ALTERNATE I (MAR 1988)

This alternate is required for all cost-reimbursement contracts issued by Regional Contracting Officers. In such cases, substitute the following paragraph (a) for that in the basic clauses:

(a) The Contractor shall submit, on a monthly basis (Contracting Officer may substitute a different time frame, if appropriate), an original and three (3) copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment," the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the Contracting Officer specified in Block 5 of the contract.

2452.237-70 Key personnel.

As prescribed in 2347.110(a), insert the following clause in solicitations and contracts when it is necessary for contract performance to identify the Contractor's key personnel.

KEY PERSONNEL (APR 1984)

The personnel specified below are considered to be essential to the work being performed under this contract. Prior to diverting any of the specified individuals to other projects, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

(List Key Personnel)

(End of clause)

2452.237-71 Reproduction of reports.

As prescribed in 2437.110(b), insert the following clause in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

REPRODUCTION OF REPORTS (APR 1984)

In accordance with Title I of the Government Printing and Binding Regulations, printing of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is determined by multiplying pages times copies. A production unit is one set, size 8½ by 11 inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used in single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written materials.

(End of clause)

2452.237-72 Coordination of data collection activities.

As prescribed in 2437.110(c), insert the following clause in solicitations and contracts where the Contractor is required to collect identical information from ten or more public respondents.

COORDINATION OF DATA COLLECTION ACTIVITIES (APR 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten or more public respondents, the Paperwork Reduction Act (44 U.S.C. 3501-3520) applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting Officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

2452.237-73 Conduct of work.

As prescribed in 2437.110(d), insert the following clause in all contracts for services.

CONDUCT OF WORK (APR 1984)

(a) The Government Technical Representative (GTR) for liaison with the Contractor as to the conduct of work is ________, or a successor designated in writing by the Contracting Officer.

(b) The Contractor's work hereunder shall be carried out under the supervision of ________.

(End of clause)

ALTERNATE I

This alternate is required for all fixed-price contracts for services. In such cases, add the following paragraph (c):

(c) The GTR shall provide direction on contract performance. Such direction must be within the contract scope of work and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in FAR 52.243-2; (3) causes an increase or decrease in the cost of the contract; (4) alters the period of performance or delivery dates; or, (5) changes any of the other express terms or conditions of the contract.

2452.237-74 Technical direction.

As prescribed in 2437.110(e), insert the following clause in all cost-reimbursement type solicitations and contracts.

TECHNICAL DIRECTION (JUN 1985)

(a) The GTR will provide technical direction on contract performance. Technical direction includes:

(1) Direction to the contractor as to which areas the Contractor is to emphasize or pursue.

(2) Comments on and approval of reports or other deliverables.

(b) Technical direction must be within the contract Statement of Work.

The GTR does not have the authority to issue technical direction that: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in FAR 52.243-2; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the period of performance; or (5) changes any of the other express terms or conditions of the contract.

(c) Technical direction will be issued in writing by the GTR or confirmed by him or her in writing within five calendar days after verbal issuance.

(End of clause)

2452.237-75 Clearance of personnel.

As prescribed in 2437.110(f), insert the following clause in solicitations and contracts where contractor personnel will be working on-site in any HUD office.

CLEARANCE OF PERSONNEL (JUN 1985)

(a) The Contractor shall submit to the Contracting Officer within five days after contract award, two (2) completed Forms FD-258, "Fingerprinting Charts" and one (1) GSA Form 176, "Statement of Personal History," for the Contractor and all employees who have access to the building in performance of the contract work. These forms must be submitted for all replacement employees prior to entrance on duty. Necessary forms will be furnished by HUD. If the Contracting Officer receives an unsuitable report on any employee after processing of these forms or if the Contracting Officer finds a prospective employee to be unsuitable or unfit for his/her assigned duties, the Contractor shall be advised immediately that such employee cannot continue to work or be assigned to work under the contract.

(b) HUD shall have and exercise full and complete control over granting, denying, withholding, or terminating employment eligibility of contractor employees.

(c) Temporary identification/building passes shall be issued to each Contractor employee working on-site. The Contractor shall submit to the GTR a list of those employee(s) with their Social Security number(s). Building passes, when issued, shall indicate an expiration date not exceeding the first-year term of the contract. The passes shall be renewed for each succeeding option year, if any. The Contractor shall return, to the GTR, all building passes upon expiration of the contract, whenever the employment of any such employee is terminated, or when an employee no longer has a need for access to the building.

(End of clause)

2452.242-70 Indirect costs.

As prescribed in 2442.705-70, insert the following clause in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

INDIRECT COSTS (APR 1984)

(a) Pursuant to the provisions of the clause of this contract entitled, "Allowable Cost and Payment" the rates listed below are established. If the column entitled, "Ceiling Rate" has rates listed, the ceiling applies for those rates only. If there are no ceiling rates listed, ceilings do not apply to this contract and the provisions of paragraph (b) of this clause are not applicable.

Period	Category	Provisional rate	Ceiling rate	Base

Effective date until amended:

(b) For the term of this contract, the final indirect rates shall not exceed the ceiling rates listed above, if any. However, in the event the indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates agreed to herein, then the rates established by such cognizant audits shall apply (downward adjustment only). The Government shall not be obligated to pay any additional amounts on indirect rates above the ceiling rates set forth for the applicable period.

(End of clause)

2452.242-71 Project management system.

As prescribed in 2442.1107, insert the following clause in solicitations or contracts for professional or technical services exceeding $100,000. Use of this system may be waived by the Contracting Officer if he or she believes the Statement of Work or technical proposal are sufficiently specific or another acceptable means of project management is substituted.

PROJECT MANAGEMENT SYSTEM (JUN 1984)

The Contractor shall provide to the GTR and Contracting Officer a project management system workplan and regular status reports showing actual progress against the workplan. The project management system utilizes two reporting forms (the HUD 441.1 Baseline Plan and the HUD 661.1 Progress Report), in addition to a narrative description. Briefly, the workplan and progress reports shall consist of the following:

Workplan

The workplan shall consist of a narrative description and a graphic summary (HUD 441.1) of the schedule and financial elements of the contract. The narrative shall: (1) describe the planned schedule; (2) identify each step in the work process required for completing the contract work and the period of time needed to accomplish each step, expressed in terms of calendar dates; (3) provide the staff, financial, and other resources allocated to each task; and, (4) provide the rationale for project organization, staff utilization, and other resources allocated to each task or activity. The HUD 441.1 shall show: (1) cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract; and (2) the planned project schedule that traces, by reporting period, the task or subtask start dates, periods of work in progress, and completion dates.

Progress Reports

Progress reports shall consist of a narrative report and the HUD 661.1 which depicts actual progress against planned progress. The narrative report shall: (1) provide a brief, factual summary description of technical progress made and costs incurred for each task (or group of tasks) during the reporting period; and, (2) identify significant problems and their impacts, causes, proposed corrective actions, and the effect that such corrective actions will have on the accomplishment of the contract objectives. The HUD 661.1 reproduces the Baseline Plan (HUD 441.1) and shall show: (1) the schedule status or the degree of completion of tasks/activities by time intervals; and, (2) cost status or the actual costs of work performed in accomplishing the tasks.

Specific and detailed guidance on preparing the forms and the narratives may be obtained from the GTR.

(End of clause)

2452.246-70 Inspection and acceptance.

As prescribed in 2446.502-70, insert the following clause in solicitations and contracts unless inspection and acceptance will be performed by someone other than the GTR.

INSPECTION AND ACCEPTANCE (APR 1984)

Inspection and acceptance of all work required under this contract shall be performed by the Government Technical Representative (GTR) identified in Block 11 of the SF-26, or other individual as designated by the Contracting Officer of GTR.

(End of clause)

2452.251-70 Contractor employee travel.

As prescribed in 2451.303, insert the following clause in all cost-reimbursement solicitations and contracts involving airline travel.

CONTRACTOR EMPLOYEE TRAVEL (FEB 1987)

(a) In the event that travel is required by this contract, the Contractor shall, to the maximum extent practical, utilize the travel discounts offered to Federal travelers, through use of contracted airline discount air fares, hotel and motel lodging rates, and car rental companies, which are available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the Contracting Officer.

(b) The Contractor shall provide the Contracting Officer with the names of those individuals who are required to travel per the contract terms. The Contracting Officer shall provide the Contractor with an identification letter for presentation to the participating vendors.

(c) The Contractor shall bill the Government for the actual costs incurred for travel in accordance with FAR 31.205-46, ensuring that other savings achieved through the use of any discount fares accrue to the Government.

(End of clause)

PART 2453—FORMS

Sec.
2453.000 Scope of part.

Subpart 2453.2—Prescription of Forms

2453.213 Small purchases and other simplified purchase procedures.
2453.213-70 HUD Form 24007, Purchase/Delivery Order Data File.
2453.213-71 HUD Form 24001, Order for Supplies or Services.
2453.213-72 HUD Form 2542, Purchase Order and Payment Authorization.
2453.215 Contracting by negotiation.
2453.215-70 HUD Form 4056, Abstract of Proposals.
2453.217 Special contracting methods.
2453.217-70 HUD Form 730, Award/Modification of Interagency Agreement.
2453.227 Patents, data, and copyrights.
2453.227-70 HUD Form 770, Report of Inventions and Subcontracts.
2453.242-70 HUD Form 441.1, Project Management System Baseline Plan.
Sec.
2453.242-71 HUD Form 661.1, Project Management System Progress Report.
2453.246 Quality Assurance.
2453.246-70 HUD Form 9519, Acquired Property Inspection Report.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46543, Nov. 17, 1988, unless otherwise noted.

2453.000 Scope of part.

This part prescribes Agency forms for use in acquisition and contains requirements and information generally applicable to the forms.

Subpart 2453.2—Prescription of Forms

2453.213 Small purchases and other simplified purchase procedures.

2453.213-70 HUD Form 24007. Purchase/Delivery Order Data File.

As prescribed in 2413.107(a)(4), HUD Form 24007 may be used by the Contracting Officer to record all relevant data pertaining to a small purchase, including recording written and oral quotations received and documenting orders against GSA contracts.

2453.213.71 HUD Form 24001, Order for Supplies or Services.

As prescribed in 2413.505-2(a), Contracting Officers may use HUD Form 24001 in lieu of Optional Form 347 for individual purchases not exceeding the small purchases limit.

2453.213-72 HUD Form 2542, Purchase Order and Payment Authorization.

As prescribed in 2413.505-2(b), Contracting Officers shall use HUD Form 2542 for small purchases under the Acquired Property Programs.

2453.215 Contracting by negotiation.

2453.215-70 HUD Form 4056, Abstract of Proposals.

As prescribed in 2415.411-70, HUD Form 4056 may be used by the Contracting Officer to record the names and addresses of offerors whose proposals are received before the stated deadline.

2453.217 Special contracting methods.

2453.217-70 HUD Form 730, Award/Modification of Interagency Agreement.

As prescribed in 2417.504(b), HUD Form 730 shall be used by Contracting Officers when placing or modifying an order for supplies or services from another Government agency.

2453.227 Patents, data, and copyrights.

2453.227-70 HUD Form 770, Report of Inventions and Subcontracts.

As prescribed in 2427.305-2, HUD Form 770 shall be completed by the Contractor, and submitted to the Contracting Officer, if requested, upon completion of the contract.

2453.242 Contract administration.

2453.242-70 HUD Form 441.1, Project Management System Baseline Plan.

As prescribed in 2442.1106(a), HUD Form 441.1 shall be used in contract for professional or technical services exceeding $100,000.00 by Contractors to show how they propose to carry out the contract work. The requirement may be waived by the Contracting Officer if he or she believes that the Statement of Work or Contractor's technical proposal is sufficiently specific or another acceptable means for project management is substituted.

2453.242-71 HUD Form 661.1, Project Management System Progress Report.

As prescribed in 2442.1106(a), HUD Form 661.1 shall be used in conjunction with the HUD Form 441.1 to monitor quantitative progress against the baseline plan. The 661.1 need not be used if use of HUD Form 441.1 has been waived by the Contracting Officer; however, some acceptable means of progress reporting must be substituted.

2453.246 Quality Assurance.

2453.246-70 HUD Form 9519, Acquired Property Inspection Report.

As prescribed in 2446.6, HUD Form 9519 shall be used to document inspection and acceptance for work performed on properties under the Acquired Property Program.

CHAPTER 25—NATIONAL SCIENCE FOUNDATION

(Parts 2500 to 2599)

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SUBCHAPTER A—GENERAL

PART 2501—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2501.1—Purpose, Authority, Issuance

Sec.
2501.101 Purpose.
2501.102 Authority.
2501.103 Applicability.
2501.104 Issuance.
2501.104-1 Publication and code arrangement.
2501.104-2 Arrangement of regulations.

Subpart 2501.4—Deviations From the FAR

2501.403 Individual deviations.
2501.404 Class deviations.

Subpart 2501.6—Contracting Authority and Responsibilities

2501.601 General.
2501.602 Contracting officers.
2501.602-1 Authority.

AUTHORITY: 42 U.S.C. 1870(a).

SOURCE: 49 FR 46744, Nov. 28, 1984, unless otherwise noted.

Subpart 2501.1—Purpose, Authority, Issuance

2501.101 Purpose.

These regulations implement and supplement the Federal Acquisition Regulations (FAR).

2501.102 Authority.

The NSF Acquisition Regulations are issued under the authority of section 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

2501.103 Applicability.

Except where a deviation is specifically authorized in accordance with subpart 2501.4 or otherwise authorized by law, the FAR and the NSFAR govern all NSF acquisitions.

2501.104 Issuance.

2501.104-1 Publication and code arrangement.

(a) The NSFAR is published in the daily issues of the FEDERAL REGISTER and, in cumulative form, in the Code of Federal Regulations.

(b) The NSFAR is issued as chapter 25 of title 48, CFR.

2501.104-2 Arrangement of regulations.

The NSFAR uses the same numbering system and arrangement used in the FAR. Where the NSFAR implements the FAR it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, Parts 70 and up are used by the NSFAR. Where the subject matter in the FAR requires no implementation the NSFAR contains no corresponding part.

Subpart 2501.4—Deviations From the FAR

2501.403 Individual deviations.

Individual deviations, affecting only one contracting action may be authorized by the NSF Procurement Executive.

2501.404 Class deviations.

Class deviations may be authorized by the NSF Procurement Executive subject to the limitations set forth in FAR subpart 1.4.

Subpart 2501.6—Contracting Authority and Responsibilities

2501.601 General.

Authority and responsibility to contract for authorized supplies and services is vested in the Director, NSF, within the limits expressly provided by the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*) The NSF Procurement Executive is delegated overall responsibility by the Director for the Foundation's contracting activities.

2501.602 Contracting officers.

2501.602-1 Authority.

NSF Contracting Officers have authority to enter into, administer, or terminate contracts and make related determinations and findings to the extent of the authority delegated to them in writing by the NSF Procurement Executive.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2515—CONTRACTING BY NEGOTIATION

AUTHORITY: 42 U.S.C. 1870(c).

SOURCE: 49 FR 46744, Nov. 28, 1984, unless otherwise noted.

Subpart 2515.2—Negotiation Authorities

2515.215-70 NSF negotiation authorities.

(a) *Authorities.* Citation: 42 U.S.C. 1870(c).

(b) *Application.* When an NSF contract is for scientific activities which are determined by the NSF contracting officer to be "necessary to carry out the purposes of the NSF Act," then 41 U.S.C. 252(c)(15) is applicable and the contract may be entered into through negotiation rather than formal advertising. The Foundation's contracting officer may, in lieu of reliance on 42 U.S.C. 1870(c) and 41 U.S.C. 252(c)(15), utilize other applicable negotiating authorities at his or her discretion. 42 U.S.C. 1870(c) and 41 U.S.C. 252(c)(15) may also be used to authorize negotiation if the Foundation is carrying out, "at the request of the Secretary of State or Secretary of Defense, specific scientific activities in connection with matters relating to international cooperation or national security." Contracts or their modifications entered into under this authority may be done so without legal consideration and without performance or other bonds.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2527—PATENTS, DATA, AND COPYRIGHTS

Subpart 2527.70—Disposition of Rights in Inventions

Sec.
2527.7001 General.
2527.7002 NSF patent policy.

Subpart 2527.71—Data Rights—[Reserved]

Authority: 35 U.S.C. 200 et seq., commonly called the Bayh-Dole Act, as implemented by OMB Circular A-124; secs. 11(e) and 12(a) of the National Science Foundation Act, as amended (42 U.S.C. 1870(e) and 1871(a)); and the Presidential Memorandum entitled "Government Patent Policy", issued Feb. 18, 1983.

Source: 49 FR 46744, Nov. 28, 1984, unless otherwise noted.

Subpart 2527.70—Disposition of Rights in Inventions

2527.7001 General.

The policies, procedures, and clauses that govern allocation of rights to inventions made in performance of NSF sponsored research were published in the Federal Register on May 2, 1983 at 48 FR 19860 as 45 CFR part 650. These regulations shall also apply to contracts entered into by the National Science Foundation.

2527.7002 NSF patent policy.

As authorized by the National Science Board at its 230th meeting, October 15-16, 1981, the Director of the National Science Foundation adopted the following statement of NSF patent policy:

(a) As required by the Bayh-Dole Act and the Presidential Memorandum entitled "Government Patent Policy" issued February 18, 1983, the Foundation will use the Patent Rights clause prescribed by the Office of Management and Budget in all its funding agreements for the performance of experimental, developmental, or research work, including contracts for the operation of Government-owned research facilities, unless the Foundation determines that some other provision would better serve the purposes of that Act or the interests of the United States and the general public.

(b) In funding agreements covered by a treaty or agreement that provides that an international organization or foreign government, research institute, or inventor will own or share patent rights, the Foundation will acquire such patent rights, as are necessary to comply with the applicable treaty or agreement.

(c) The Foundation will claim no rights to inventions in funding agreements made primarily for the support of education or training, such as fellowships and traineeships. A disclaimer of interest in inventions will be included in such awards.

(d) If an awardee elects not to retain rights to an invention, the Foundation will allow the inventor to retain the principal patent rights unless the awardee shows that it would be harmed by that action.

(e) The Foundation will normally allow any patent rights not wanted by the awardee or inventor to be dedicated to the public through publication. However, if another Federal agency is known to be interested in the relevant technology, the Foundation may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.

(f) The Foundation will waive the restrictions imposed by the Bayh-Dole Act on the assignment or exclusive licensing of NSF-supported inventions by a nonprofit organization when that appears to serve the policy and objective of the Act. For identified inventions, the Foundation will waive the restrictions if the nonprofit organization obtains from the prospective assignee or licensee a firm commitment to develop and commercialize the invention. In any industry-university joint research award, the Foundation will waive the restrictions at the time of award if the nonprofit organization shows that they are unfair considering the industrial participant's contribution or that the project will not be undertaken unless they are waived.

(g) In funding agreements not controlled by the Bayh-Dole Act, the Foundation will waive any of the rights or conditions normally reserved or imposed if the grantee or contractor demonstrates (i) that the interests of the United States and the general public will be better served thereby, or (ii) that it is making a substantial contribution of funds, facilities, or equipment to the work performed under the funding agreement.

(h) As far as practical, the Foundation will apply the intent of this policy to funding agreements entered into before the effective dates of the Bayh-Dole Act and the Presidential Memorandum.

Subpart 2527.71—Data Rights—[Reserved]

PART 2532—CONTRACT FINANCING

Subpart 2532.4—Advance Payments

Sec.
2532.401 Statutory authority.
2532.403 Applicability.

AUTHORITY: 42 U.S.C. 1870(d).

SOURCE: 49 FR 46745, Nov. 28, 1984, unless otherwise noted.

Subpart 2532.4—Advance Payments

2532.401 Statutory authority.

The NSF Act (42 U.S.C. 1870(d)) provides that advance, progress, or other payments which relate to scientific activities or scientific information may be made without regard to the provisions of section 3548 Revised Statutes (31 U.S.C. 529).

2532.403 Applicability.

Advance payments may be made in any amount not exceeding the contract price, provided (a) the amount of the advance payment is based upon an analysis of the financing required by the contractor for the contract and does not exceed reasonable financial requirements between payments, and (b) such advance payment is appropriate in order to contract for the required work.

CHAPTER 28—DEPARTMENT OF JUSTICE

(Parts 2800 to 2899)

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SUBCHAPTER A—GENERAL

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

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2801.303 Codification and public participation.
2801.304 Agency control and compliance procedures.

Subpart 2801.4—Deviations From the Federal Acquisition Regulations and the Justice Acquisition Regulations

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2801.601-70 Modifications of contracting officer's delegation.
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Subpart 2801.70—Contracting Officer's Technical Representative—Appointment, Limitation of Authority, and Termination

2801.7001-701 General.
2801.7001-702 Appointment.
2801.7001-703 Limitations.
2801.7001-704 Termination.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Source: 50 FR 4450, Jan. 30, 1985, unless otherwise noted.

2801.000 Scope of part.

This part sets forth the basic policies and general information concerning the Department of Justice Acquisition Regulations (JAR).

Subpart 2801.1—Purpose, Authority, Issuance

2801.101 Purpose.

The JAR is established to provide procurement regulations that supplement the Federal Acquisition Regulation (FAR) (48 Code of Federal Regulations (CFR), chapter 1). As such, the regulations contained in the JAR will include coverage of only those areas where agency implementation is required by the FAR, or where Department of Justice policies and procedures exist that supplement FAR coverage and directly affect the contractual relationship between the Department and potential or existing contractors. The JAR will not repeat or supplement FAR coverage where considered unnecessary. The JAR is not a complete system of regulations and must be used in conjunction with the FAR.

Subpart 2801.3—Agency Acquisition Regulations

2801.301 Policy.

(a) In accordance with FAR 1.301(b) and paragraph (c) of this section, the Department may issue acquisition regulations that supplement or implement the FAR.

(b) Subject to the authority in paragraph (c) of this section, the Department may also issue internal policies and procedures for the efficient administration of its procurement programs and to meet the specific needs of the agency.

(c) Regulations and internal policies and procedures under the JAR are issued in accordance with the lawful authority vested in the Attorney General. Authority to issue department wide acquisition regulations has been delegated by Attorney General Order 1085-85 to the Office of the Procurement Executive, subject to the review of the Assistant Attorney General of Administration (AAG/A).

(d) The JAR consists of: (1) Department wide regulations which supplement or implement the FAR and which directly affect the contractual relationship between the Department's existing or potential contractors;

(2) Published and codified bureau regulations which supplement and implement the FAR and directly affect the contractual relationship;

(3) Published internally but not codified department wide policies and procedures which provide administrative guidance in the acquisition process in accordance with FAR 1.301(b); and

(4) Published internally but not codified bureau internal policies and procedures which provide administrative guidance in the acquisition process in accordance with FAR 1.301(b).

[50 FR 4450, Jan. 30, 1985, as amended at 50 FR 29798, July 22, 1985; 53 FR 49665, Dec. 9, 1988]

2801.303 Codification and public participation.

(a) Implementing and supplemental regulations issued under the JAR are codified under chapter 28 of title 48 of the CFR and conform to the numbering system specified in FAR 1.303.

(b) Department wide regulations (see 2801.301(d)(1)) for which there *is* a FAR counterpart or assigned part, subpart, section, or subsection numbers 2801 through 2869. Department wide material for which there is *no* FAR counterpart shall be codified using part, subpart, section, or subsection numbers 70 through 79. For example, the Department of Justice (DOJ) assigned chapter number in title 48 is 28, part 2870, subpart 2801.70, section 2801.370, or subsection 2801.370-70.

(c) Bureauwide regulations (see 2801.301(d)(2)) are assigned parts 2880 through 2899 under 48 CFR as follows:

2880—2881 Justice Management Division
2882—2883 Drug Enforcement Administration
2884—2885 Federal Bureau of Investigation
2886—2887 Federal Prison Industries
2888—2889 Office of Justice Programs
2890—2891 U.S. Marshals Service
2892—2893 Immigration and Naturalization Service
2894—2895 Bureau of Prisons
2896—2899 [Reserved]

(d) Public participation in the development of the JAR, including subsequent significant amendments or revision, shall be provided by a notice in the FEDERAL REGISTER. Normally, at least 60 days will be provided for comments. In the event of urgency, regulations may be published in final form without an initial comment period. Such instances will be fully justified in the FEDERAL REGISTER notice and give invitation and consideration to comments received after publication within the time period specified in the notice.

2801.304 Agency control and compliance procedures.

(a) The AAG/A shall review and approve all department wide and bureauwide acquisition regulations prior to publication in the FEDERAL REGISTER to insure compliance with departmental policy and consistency with the FAR.

(b) The Office of the Procurement Executive shall review and approve in writing all bureau unpublished internal acquisition policies and procedures prior to their implementation. A record of the approved bureau policies and procedures will be maintained by the Office of the Procurement Executive.

[50 FR 4450, Jan. 30, 1985, as amended at 50 FR 29798, July 22, 1985]

Subpart 2801.4—Deviations From the Federal Acquisition Regulations and the Justice Acquisition Regulations

2801.403 Individual deviations.

(a) Individual deviations from the FAR affecting only one contract action shall be approved in advance by the Office of the Procurement Executive. Individual deviations from the JAR where the regulation or policy has department wide effect (see 2801.303(b)) shall also be approved in advance by the Office of the Procurement Executive.

(b) Individual deviations from bureau wide regulations codified in the JAR shall be approved by the bureau head or person designated by the bureau head. Such delegation shall not be lower than the chief of the contracting office (see definition under subpart 2802.1).

(c) A copy of the approved deviation together with the justification shall be included in the contract file. In addition, approved deviations from the FAR shall be submitted by the approving official, together with the justification, to the FAR Secretariat in accordance with FAR 1.403.

[50 FR 4450, Jan. 30, 1985, as amended at 50 FR 29798, July 22, 1985]

2801.404 Class deviations.

Requests for class deviations from the FAR or the JAR shall be submitted to the Procurement Executive. The Procurement Executive will consult with the chairperson of the Civilian Agency Acquisition Council, as appropriate, and send his recommendations to the Assistant Attorney General for Administration. The Assistant Attorney General for Administration will grant or deny requests for such deviations. For the purposes of this regulation, requests for deviations involving basic ordering agreements, master type contracts or situations where multiple awards are made on one solicitation are considered to involve more than one contract and are therefore considered to be class deviation requests.

[54 FR 40877, Oct. 4, 1989]

2801.470 Requests for deviations.

Requests for approval of any deviation from the FAR or JAR shall be forwarded to the Procurement Executive. Such requests will be signed by the Chief of the contracting office. Requests for deviations shall be submitted as far in advance as the exigencies of the situation permit and shall contain the following information as a minimum:

(a) Identification of the FAR or JAR requirement from which a deviation is sought;

(b) A full description of the deviation and the circumstances under which it will be used including background information which will contribute to a fuller understanding of the deviation sought;

(c) A description of the intended effect of the deviation together with the number of procurement actions affected by the deviation, if approved;

(d) A statement as to whether the deviation has been requested previously, and if so, the circumstances of the previous request;

(e) The name of the contractor(s) and identification of the contract(s) affected including the dollar value;

(f) A copy of all pertinent documents including forms or clauses and the proposed contractor's request if any;

(g) A statement of the period of time for which the deviation is needed (when it is known that a deviation will be required on a permanent basis the chief of the contracting office shall forward with the request an appropriate FAR revision which will cover the matter);

(h) A copy of the alternate procedures the bureau intends to use if the deviation is approved; and,

(i) A copy of the bureau legal counsel's concurrence or comments thereon.

[54 FR 40877, Oct. 4, 1989]

Subpart 2801.6—Contracting Authority and Responsibilities

2801.601 General.

(a) In accordance with Attorney General Order 1085-85, the authority vested in the Attorney General with respect to contractual actions is delegated to the following officials:

(1) Assistant Attorney General for Administration (for the offices, boards, and divisions (OBDs));

(2) Director, Federal Bureau of Investigation;

(3) Director, Bureau of Prisons;

(4) Commissioner, Federal Prison Industries;

(5) Commissioner, Immigration and Naturalization Service;

(6) Administrator, Drug Enforcement Administration;

(7) Assistant Attorney General, Office of Justice Programs; and

(8) Director, U.S. Marshals Service.

(b) The contracting officer authority delegated to the officials in 2801.601(a) may be redelegated to subordinate officials as necessary for the efficient and proper administration of the Department's procurement operations. Such redelegated authority shall expressly state whether it carries the power of redelegation and the limits, if any, of the redelegation authority (see 2801.601(d) for the mandatory elements to be included in a procurement authority redelegation memorandum). Redelegations of procurement authority existing prior to the effective date of this amendment are not voided by this amendment, however, an individual having an existing redelegation of procurement authority shall not have the power of redelegation unless the existing redelegation expressly grants this authority or is reissued in accordance with this paragraph.

(c)(1) Contracting Officer authority to other than those positions expressly identified in paragraphs (a)(1) through (a)(8) of this section shall be redelegated only to subordinate individuals who:

(i) Are employed in the 1100 personnel classification series and have been determined eligible for a delegation of authority in accordance with the standards in subpart 2801.603; or,

(ii) Must function as contracting officers in the performance of their duties; except that

(iii) Authority to make small purchases may be redelegated to subordinate individuals not classified in the 1100 series provided:

(A) That the office(s) they serve would otherwise be without supply support for their immediate needs or the individuals are being authorized to place task orders or similar instruments against established DOJ or other agency contracts; and

(B) The individuals have been adequately instructed in the regulations concerning small purchases.

(2) The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the government in its commercial business dealings. It is not intended to affect the organizational relationship between the contracting officers and higher administrative and supervisory levels in the performance of their duties.

(d) Redelegations to other than those positions expressly identified in 2801.601(a) shall be made only to individuals. Redelegations shall be in writing and shall contain the following mandatory elements:

(i) The dollar limit, if any, of the redelegation.

(ii) If the redelegation of authority carries the power of redelegation and the limits of the redelegation authority.

(iii) Any limitations on the type of purchases, i.e. open market, GSA schedules, etc.

(e) When exercising redelegated contracting officer authority a designated employee shall be identified as the contracting officer and shall function within the limits prescribed by law, the FAR, the JAR, and their redelegation of contracting authority.

(f) A contracting officer shall maintain evidence of his/her redelegation and scope of authority and while functioning as a contracting officer shall make such evidence available upon request.

(g) A copy of all redelegations of procurement authority, along with documentation showing the candidate's experience and training in the procurement field, shall be submitted to the Office of the Procurement Executive. The Procurement Executive may make recommendations to improve or enhance the candidate's qualifications if such action is appropriate.

[51 FR 758, Jan. 8, 1986, as amended at 52 FR 32796, Aug. 31, 1987]

2801.601-70 Modifications of contracting officer's delegation.

Delegation documents shall not be modified. To effect modification the current delegation shall be revoked and a new delegation issued.

2801.602-3 Ratification of unauthorized commitments.

The HCA may delegate to subordinate individuals approval of ratification requests of $5,000 and below; however, in no case shall the authority be delegated below the level of chief of the contracting office.

[53 FR 49665, Dec. 9, 1988]

2801.602-70 Office of the Procurement Executive.

(a) Prior to execution of any contractual action which:

(1) Exceeds $50,000 and was solicited using other than full and open competition procedures, including amendments or modifications to these contracts which cause the total contract costs to exceed $50,000;

(2) Exceeds $100,000 and was solicited using full and open competition procedures, including amendments or modifications to these contracts which cause total contract costs to exceed $100,000; or,

(3) All contracts evaluated on the basis of system life costs and/or are evaluated on the basis of option pricing regardless of dollar value,

the contracting officer shall forward the proposed contract action to the Office of the Procurement Executive for review. For the purposes of this section contractual actions include all pre-award and post-award contractual actions above the thresholds in paragraphs (a)(1) through (3) of this section, including but not limited to modifications, ratifications, and options but excluding orders from Federal Supply Schedules and orders from Basic Ordering Agreements. Review by the Office of the Procurement Executive is applicable to all organization elements in the Department with the exception of the FBI. It is the responsibility of the FBI's Contract Review Board to ensure that procurement actions are awarded in conformity with applicable statutes, regulations, and procedures. This exemption does not exempt the FBI from other oversight responsibilites of the Office of the Procurement Executive, including Procurement Executive review and approval of justifications for other than full and open competition on contracts over $10 million.

(b) Prior to submission to the Procurement Executive, the legal office for each bureau-level procurement activity is responsible for reviewing and approving all such procurement actions for legal sufficiency.

(c) The AAG/A and/or the Procurement Executive may waive any requirement for preaward contract review, except one specifically required by statute. Requests for waivers shall be submitted to the Procurement Executive in accordance with paragraph (d) of this section.

(d) Except for extreme emergencies, waiver requests must be in writing and include a detailed explanation as to why a waiver is required as well as information explaining reasons why a contract or class of contracts cannot be reviewed on a preaward basis. Telephone waivers may be granted in extreme emergencies. All contract documents that are available at the time a waiver request is made must accompany the request for review. All available documents will be reviewed to assure that the award is legally sufficient prior to the granting of a waiver. A postaward review of the completed contract file is required. Waivers will not be granted near the end of a fiscal year for the purpose of obligating year end funds.

(e) There is established, in accordance with Attorney General Order 1085-85, a Contract Appeals Panel to permit the head of a bureau-level procurement activity to appeal a decision of the Procurement Executive. This panel shall be composed of the Deputy Attorney General (who shall serve as Chairperson), the Associate Attorney General, and the Assistant Attorney General for Administration. The panel shall meet on an ad hoc basis as necessary and determined by the Chairperson. The head of a contracting activity, as defined in 2802.102(c), when appealing a decision of the Procurement Executive shall follow the procedures described in paragraphs (e)(1) through (4) of this section.

(1) The appeal file shall be submitted through the Office of the Procurement Executive (OPE) to the Deputy Attorney General as Chairperson of the Contract Appeals Panel. Submission of the appeal through the OPE is required so that the Procurement Executive may provide a written response to the issues raised in the appeal and, due to the ad hoc nature of the Con-

tract Appeals Panel, provide a location for the collection and maintenance of appeal documents and files. The Procurement Executive shall forward the appeal file to the Chairperson within five working days of receipt.

(2) Content of the Appeal File. The appeal file must be complete in that it fully addresses the issue(s) being appealed. The file shall include a copy of the proposed contract or other award action, documents relied upon by the contracting officer in taking the action under dispute, the Procurement Executive's decision and a statement of facts setting forth the basis on which the appeal is made. The statement of facts shall cite, where applicable, procurement regulations, statutes, or decisions by other authorities, such as GAO decisions, that support or form the basis of the appeal. A summary shall be provided stating the resolution requested by the procurement activity. An original and three copies of the appeal file shall be submitted.

(3) The head of the contracting activity shall also submit to the OPE, with the appeal file, the original contract file as submitted to the OPE for review.

(4) The Contract Appeals Panel, following review and consideration of the appeal shall issue its decision in writing to the head of the contracting activity through the Office of the Procurement Executive and return with the decision all documents submitted by the contracting activity.

(f) The Office of the Procurement Executive is authorized to postaudit any procurement transaction throughout the Department and direct that corrective actions be taken wherever deemed necessary, and to inspect at any time the procurement operations of the Justice Management Division, Federal Bureau of Investigation, Bureau of Prisons, Federal Prison Industries, Inc., Immigration and Naturalization Service, Drug Enforcement Administration, Office of Justice Programs, the National Institute of Corrections, United States Marshals Service and other organizational elements exercising delegated procurement authority.

[50 FR 29798, July 22, 1985, as amended at 51 FR 759, Jan. 8, 1986; 52 FR 34390, Sept. 11, 1987; 53 FR 49665, Dec. 9, 1988]

2801.603 Selection, appointment and termination.

(a) *Contracting officer standards.* This subpart set forth policies and procedures for establishing standards for contracting officers in DOJ. The program sets forth minimum requirements for procurement related training and experience to be eligible for a delegation of authority as a contracting officer. The purpose of this program is to assure that DOJ procurement activities appoint qualified individuals as contracting officers.

(b) *Applicability.* (1) The eligibility requirements of this subpart apply to all personnel in the GS or GM 1102 series, or to other personnel, who award contracts in excess of $25,000. It is not applicable to management officials of the Department and its components who have contracting officer authority by virture of their organizational placement at a level above the Chief of the Contracting activity as defined in JAR 2802.102(f) or to the following:

(i) Individuals authorized to award procurement actions equal to or less than the small purchase threshold established in FAR part 13.

(ii) Individuals authorized to place orders under Federal Supply Schedule Contracts or other agency (including DOJ) established source contracts; or

(iii) Personnel authorized to conduct or issue imprest fund transactions, training authorizations, travel documents, printing and duplicating services, placement of newspaper advertisements, or procurement of similar services.

(2) *Other limitations on applicability.* A determination by a Bureau official having the authority to redelegate procurement authority that an individual meets the prescribed standards as stated herein does not affect established Office of Personnel Management and DOJ qualifications for hiring, promotion or other personnel actions. There is no direct relationship between a determination that a candidate meets the standards and an individual's grade level or eligibility for

promotion. Bureaus, however, may establish relationships between grade level, experience, and training and the dollar amount or other limitations when issuing delegations of authority. Any established relationship, however, may not be inconsistent with, or lower than the qualification requirements of this section.

(c) *Delegation of authority requirements.* To be determined eligible for a delegation of authority as a DOJ contracting officer the candidate must meet the following minimum standards:

(1) Level I Purchasing agent—Signature authority to award contracts not exceeding the small purchase threshold as set forth in FAR part 13. A determination of eligibility in accordance with Department-wide standards is not required for level I appointments (see other exceptions at 2801.601(c)). Bureaus shall establish standards for Level I appointments in accordance with their needs and policies.

(2) Level II Contracting Officer—Signature authority to award contracts not exceeding $100,000.

(i) Two years of procurement experience as a contract specialist, contract administrator or purchasing agent that demonstrated the ability to perform as a contracting officer at Level II.

(ii) Completion of 120 hours of procurement training from the subject areas listed in 2801.601(f).

(3) Level III Contracting Officer—Signature authority to award contracts not exceeding $500,000.

(i) Three years combination of procurement experience as a contract specialist or contract administrator, including six months as a contracting officer equivalent to Level II responsibilities, that demonstrated the ability to perform as a contracting officer at Level III.

(ii) Completion of an additional 80 hours of training (cumulative total of 200 hours) from the subject areas listed in 2801.601(f).

(4) Level IV Contracting Officer—Signature authority to award contracts exceeding $500,000.

(i) Four years combination of procurement experience as a contract specialist or contract administrator including one year of experience as a contracting officer equivalent to the Level III responsibilities that demonstrated the ability to perform at Level IV.

(ii) Completion of an additional 80 hours of training (cumulative total of 280 hours) from the subject areas listed in 2801.601(f).

(d) *Equivalencies.* (1) Completion of an undergraduate degree (baccalaureate) from an institution of higher education regardless of the major field of study may be substituted for one year of procurement experience.

(2) Completion of an undergraduate degree (baccalaureate) from an institution of higher education with a major in business, economics, accounting or procurement may be substituted for two years of procurement experience and 40 hours of classroom training.

(3) Completion of a graduate degree from an institution of higher education regardless of major field of study may be substituted for two years of procurement experience.

(4) Completion of a graduate degree from an institution of higher education with a major in business, economics, accounting, or procurement may be substituted for two years of procurement experience and 120 hours of classroom training.

(5) Completion of a Juris Doctor (J.D.) degree from an American Bar Association accredited law school may be substituted for three years of procurement experience and 180 hours of training. If the J.D. degree is combined with state bar membership in any state or U.S. territory an additional six months experience and 20 hours of training will be credited.

(6) Passing of an examination or certification by a nationally recognized professional contract or procurement organization and which has been approved by the Procurement Executive may be substituted for experience requirements and prescribed training courses.

(e) *Training subject areas.* (1) It is understood that the following are meant to be general subject areas, not course titles. The Bureau in determining the acceptability of a particular course will make a determination based on what is generally understood in the procurement field to be procurement or procurement related training. Training may be accomplished in-house or obtained from outside sources.

(i) Basic Procurement;

(ii) Sealed Bids;

(iii) Negotiated Procurements;

(iv) Cost and Price Analysis (recommended 40 hrs);

(v) Contact Law;

(vi) Negotiation Techniques (recommended 40 hrs);

(vii) Contract Administration (recommended 40 hrs);

(viii) ADP Procurement;

(ix) A & E Contracting;

(x) Construction Contracting;

(xi) Small Purchase/Federal Supply Schedules;

(xii) Contract Termination and Negotiation Settlements

(2) In addition the candidate should have taken or scheduled to take at least 40 hours classroom training in a specialized area applicable to his or her assigned workload. For example, a candidate for certification who primarily works with ADP or construction contracting would be expected to have training in those areas as part of the minimum hours.

(f) *Eligibility applications/delegation of procurement authority.* Bureau officials authorized to redelegate procurement authority shall make a written determination that the individual meets the standards set forth in this Subpart prior to granting the redelegation of authority. Eligibility determinations shall be based on documentation provided by the candidate. Applications shall include at a minimum a completed and signed SF 171 or equivalent that demonstrates training, experience, and education and a copy of the applicant's existing delegation of authority, if applicable, and the proposed delegation of authority. Applicants shall be responsible for submitting adequate documentation concerning education, training, and experience to enable the Bureau official to make a determination regarding the candidates' eligibility for a delegation of authority. Once approved, a copy of the redelegation and supporting documents shall be sent to the Office of the Procurement Executive for review (See JAR 2801.601(g)).

(g) *Existing delegations of authority.* Contracting officers having an existing redelegation of procurement authority on the effective date of this rule shall submit an application for review by the Bureau official within six months of the effective date of this regulation. Individuals holding existing redelegations of procurement authority who are ineligible for a delegation of authority based on the standards in this subpart may retain their existing redelegation for a period of two years from the effective date of this regulation while qualifying under the standards. If the individual fails to qualify for a delegation of authority during the two year period the delegation of authority shall be terminated by the procurement activity.

Existing redelegation shall not be changed to increase the dollar authority or remove other limitations until the individual is determine eligible under the prescribed standards.

(h) *Waivers.* It is recognized that implementation of a standards program may cause, particularly in its initial implementation, significant problems. Circumstances may exist beyond the individual's control that prevent a candidate from achieving training goals or agencies established staffing practices, particularly in field installations, may conflict, and not be subject to immediate practical resolution. To address these situations a waiver may be granted on an individual basis in accordance with the following procedures:

(1) Waivers may only be granted by the Procurement Executive.

(2) The request for a waiver must be in writing and contain a complete justification for the action requested. In addition, a plan must be submitted with the request setting forth a schedule of training if the lack of classroom training is the deficiency factor.

(3) Waiver requests shall be submitted by the individual authorized to grant the delegation of procurement authority.

(4) Waiver requests should be viewed as exceptional and only be made where no other practical solution can

be found. In addition to the above requirements, a waiver request must demonstrate that the individual on whose behalf the request is made is, except for the specific deficiencies under the standards, qualified to perform as a contracting officer at the level requested.

[52 FR 32797, Aug. 31, 1987, as amended at 53 FR 49665, Dec. 9, 1988]

Subpart 2801.70—Contracting Officer's Technical Representative—Appointment, Limitation of Authority, and Termination

2801.7001-701 General.

Contracting officers may select and appoint other departmental officials to act as authorized representatives in the monitoring and administration of a contract based on the technical, professional, and administrative qualifications of the individual. Such officials shall be designated as Contracting Officer's Technical Representatives (COTRs). In unusual cases and with adequate justification contracting officers may designate officials from other Federal Government agencies.

2801.7001-702 Appointment.

(a) The COTR shall be appointed, in writing, by the contracting officer either through inclusion in the contract or by separate document. Such appointment shall state the scope and limitations of the COTR's authority (see 2801.7001-703 of this part and the clause in subpart 2852.201-70) and identify the contract(s) the representative will administer.

(b) Changes in the scope or limitations or authority shall be made in writing by amending the appointment document or by issuance of a new appointment.

(c) If appointment of the COTR is made by separate document, the contractor shall be promptly informed in writing of the individual appointed and the scope and limitations of the appointee's authority.

2801.7001-703 Limitations.

Each appointment of a COTR made by the contracting officer shall clearly state that the representative is not an authorized contracting officer and does not have the authority under any circumstances to:

(a) Award, agree to award, or execute any contract, contract modification, notice of intent, or other form of binding agreement;

(b) Obligate, in any manner, the payment of money by the Government;

(c) Make a final decision on any contract matter which is subject to the clause at FAR 52.233-1, Disputes; or,

(d) Terminate, suspend, or otherwise interfere with the contractor's right to proceed, nor direct any changes in the contractor's performance that are inconsistent with or materially change the contract specifications.

2801.7001-704 Termination.

Termination of the COTR's appointment shall be made in writing by the contracting officer and shall give the effective date of the termination. A copy of the notice shall be promptly forwarded to the contractor. A termination notice is not required when the COTR's appointment terminates upon expiration of the contract.

PART 2802—DEFINITIONS OF WORDS AND TERMS

Sec.
2802.000 Scope of part.

Subpart 2802.1—Definitions

2802.102 Definitions.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4452, Jan. 30, 1985, unless otherwise noted.

2802.000 Scope of part.

This part defines words and terms commonly used in this regulation. Other terms are defined in the part or subpart with which they are particularly associated.

Subpart 2802.1—Definitions

2802.102 Definitions.

Throughout this regulation the following words and terms are used as defined in this subpart unless the context in which they appear clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

(a) *Contracting activity* means an office, board, division, or bureau with the Department which has been delegated procurement authority to manage contracting functions associated with its mission or, as is the case with the Office of Justice Programs, which must adhere to the procurement policy of the Attorney General. These are:

(1) Bureau of Prisons;

(2) Drug Enforcement Administration;

(3) Federal Bureau of Investigation;

(4) Federal Prison Industries;

(5) Immigration and Naturalization Service;

(6) Justice Management Division;

(7) Office of Justice Programs;

(8) U.S. Marshals Service.

(b) *Head of the agency* (also called *agency head*) means the Attorney General, Deputy Attorney General, AAG/A, or their *authorized representative*, which means any person(s) or board (other than the contracting officer) authorized to act for the head of the agency.

(c) *Head of the contracting activity* means those officials identified in 2801.601(a) having responsibility for supervising, managing, and directing the operations of the contracting activities.

(d) *DOJ* means the Department of Justice.

(e) *JAR* means the Department of Justice Acquisition Regulations.

(f) *Chief of the contracting office* means that supervisory official who is directly responsible for supervising, managing, and directing the contracting operations of the agency or bureau.

(g) *OBD* means the offices, boards, and divisions within the Justice Department.

(h) *EOUSA* means the Executive Office of United States Attorneys.

(i) *Bureaus* means the procurement components managed by the Justice Department. (See *contracting activity* in this subpart.)

(j) *JMD* means the Justice Management Division.

(k) *USAO* means United States Attorneys' Offices.

(l) *DOJ/PE* means Departmental Procurement Executive.

(m) *BPE* means Bureau Procurement Executive.

PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2803.1—Safeguards

Sec.
2803.101-3 Agency regulations.

Subpart 2803.2—Contractor Gratuities To Government Personnel

2803.203 Reporting suspected violations of the Gratuities Clause.
2803.203-70 Agency reporting procedures.
2803.408 Evaluation and review of the SF 119.
2803.502 Subcontractor kickbacks.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4453, Jan. 30, 1985, unless otherwise noted.

Subpart 2803.1—Safeguards

2803.101-3 Agency regulations.

The DOJ regulations governing Standards of Conduct are contained in 28 CFR part 45. Agency authorized exceptions to FAR 3.101-2 are contained in 28 CFR 45.735-14.

Subpart 2803.2—Contractor Gratuities To Government Personnel

2803.203 Reporting suspected violations of the Gratuities Clause.

2803.203-70 Agency reporting procedures.

(a) DOJ personnel shall report suspected violations of the Gratuities clause (FAR 52.203-3) to the contracting officer or chief of the contracting activity in writing. The report shall clearly state the circumstances surrounding the incident, including the nature of the gratuity, the behavior or action the gratuity was to influence, and the persons involved. The Contracting officer, after review, shall forward the report along with his or her recommendations regarding the treatment of the violation in accordance with FAR 3.204(c) to the head of the contracting activity or his designee.

(b) The head of contracting activity or his designee shall determine whether adverse action against the contractor in accordance with FAR 3.204(c) should be taken. In reaching a decision, the head of the contracting activity or designee shall consult with contracting activities legal advisor or other official in the Department. Prior to taking any action against the contractor the head of the contracting activity or designee shall allow the contractor the opportunity to present opposing arguments in accordance with FAR 3.204.

(c) If the report of the suspected violation alleges that a gratuity was not only offered but also accepted by a Department employee, a copy of the report shall be forwarded by the head of the contracting activity or designee to the DOJ Office of Professional Responsibility (see 28 CFR 0.39).

2803.408 Evaluation and review of the SF 119.

(a) The contracting officer shall review and evaluate the SF 119 and all related information in accordance with FAR 3.408.

(b) The contracting officer's documentation of the evaluation, conclusions, and any proposed actions shall be reviewed and approved at a level above the contracting officer with the concurrence of the agency's procurement counsel.

2803.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act (41 U.S.C. 51-54) shall be reported by the contracting officer o the contracting activity's procurement counsel who will then advise the ontracting officer of appropriate ction.

PART 2804—ADMINISTRATIVE MATTERS

Sec.

2804.000 Scope of part.

Subpart 2804.4—Safeguarding Classified Information Within Industry

2804.402 General.
2804.403 Responsibilities of contracting officers.

Subpart 2804.6—Contract Reporting

2804.601 Federal Procurement Data System.

Subpart 2804.8—Contract Files

2804.800 Scope of subpart.
2804.803-70 Contents of contract files.

Subpart 2804.9—Information Reporting to the Internal Revenue Service

2804.900 Scope of subpart.
2804.901 Definitions.
2804.903 Procedures.
2804.903-70 Certification.
2804.970 Special reporting exceptions.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4453, Jan. 30, 1985, unless otherwise noted.

2804.000 Scope of part.

This part prescribes policies and procedures relating to the administrative aspects of contract security, reporting, and files.

Subpart 2804.4—Safeguarding Classified Information Within Industry

2804.402 General.

Classified acquisitions or contracts which require access to classified material, as defined in FAR 4.401, for their performance shall be subject to the policies, procedures, and instructions contained in departmental regulations and shall be processed in a manner consistent with those regulations.

2804.403 Responsibilities of contracting officers.

For proposed solicitations and contracts which may require access to classified material or where guard services are assigned to safeguard departmental activities in possession of classified information, the contracting officer will consult with the COTR and the Director, Security Staff to determine the appropriate security measures to safeguard such material and information.

Subpart 2804.6—Contract Reporting

2804.601 Federal Procurement Data System.

(a) Federal Procurement Data System (FPDS) reports shall be submitted to the Office of the Procurement Executive within thirty days after the close of quarters one through three, and within forty-five days of the close of the fourth quarter in a fiscal year. Specific preparation procedures are contained in the FPDS Reporting Manual and the Product and Service Code Manual.

(b) Procurement components managed by DOJ are directed to designate and provide the name, office, mailing address, and telephone number of the individual who will provide day-to-day operational contact within that component for the implementation of the FPDS. Changes and updates will be forwarded to the Office of the Procurement Executive within thirty days after they occur. It is the responsiblity of the bureau contact to ensure that *all* actions are reported and submitted to the Office of the Procurement Executive in a timely manner and that *all* statistics and reports are current.

[50 FR 4453, Jan. 30, 1985, as amended at 50 FR 29799, July 22, 1985]

Subpart 2804.8—Contract Files

2804.800 Scope of subpart.

This subpart prescribes requirements for establishing and maintaining contract files.

2804.803-70 Contents of contract files.

(a) It is the policy of the Department that all contract files be maintained in two folders. One folder shall contain all required preaward documents. The other shall contain all required award and contract administration documents.

(b) The preaward contract file shall consist of all required preaward documents as well as an Invitation for Bids (IFB) preaward file checklist or a Request for Proposals (RFP) preaward checklist.

(1) IFB preaward file checklist:

Tab No.	Document	In file	N/A
	Flap A		
1	Solicitation Document		
2	Amendments (FAR) 14.208		
3	Supervisory Solicitation Review (FAR 14.202-6).		
	Flap B		
4	Requisition (DOJ Order 2320.1)		
	Requisition with Advance Procurement Plan (APP) number.		
	Supported by a Statement of Need and APP documentation (DOJ Order 2300.5A):		
	Pertinent page from the APP (Form DOJ 528).		
	Individual Acquisition Planning Form (Form DOJ 525 or Bureau equivalent).		
	Class Acquisition Lead Time		
	Representation Statement (Form DOJ 527 or Bureau equivalent).		
	Request to postpone APP revision and FAR 6.302-2 justification and approval.		
	Written acquisition plan (Far 7.105) and supporting Major Acquisition Planning Checklist (Form DOJ 526 or Bureau equivalent).		
	Specification review by the Bureau competition advocate.		
5	Contract Status Record		
6	Presolicitation Approvals		
	AIS (DOJ Order 2830.1)		
	Micrographics (DOJ Order 2780.1).		
	Dept. Of Labor Wage Determination FAR 22.1008-1).		
	GSA Delegation of Proc. Authority (FIRMR 201-23).		
	Requisitioner		
	Other:		
7	1Determinations and Findings		
	Cancellation after Opening (FAR 14.404-1).		
	Type of Contract		
	Rejection of Individual Bids (FAR 14.404-2(f)).		
	Use of Options (FAR 17.205 and 206).		
	Set-Aside for S/B, LSA (FAR 19.501(b) and 20.201).		
	Performance Bond (FAR 28.103-2).		
	Bid Samples (FAR 14.202-4(d))		
	Descriptive Literature (FAR 12.202-5(c)).		

Tab No.	Document	In file	N/A
	Other:		
8	Synopsis (FAR 5.201)		
9	Pre-Solicitation Notice-Construction (FAR 36.302).		
10	Source List (FAR 14.205-1)		
11	Solicitation Requests		
12	Declination to Offer		
13	Clarification of Solicitation (requests and responses).		
14	Notice of Cancellation Before Opening (FAR 14.209).		
	Flap C		
15	Abstract of Bids—SF 1409 (FAR 14.403).		
16	Notice of Late Bids (FAR 14.304-2 and 304-3).		
17	Notice to Reject All Bids (FAR 14.404-3).		
18	Minor Informalities and Verification of Bids (FAR 14.405 and 406).		
19	Mistakes in Bids Before Award (FAR 14.406).		
20	Technical Evaluation—Brand Name or Equal.		
21	Determination of Price Reasonableness (FAR 14.407-2).		
22	Determination of Responsibility (FAR 9.104-1).		
23	Documentation of Award (formally SF-1036) (FAR 14.407-7).		
24	Miscellaneous Correspondence		
	Flap D		
25	Pre-Award Approvals		
	EEO Compliance Clearance (FAR 22.805).		
	Other:		
26	Supervisory Review		
27	Legal Review (AG Order 1085-85).		
28	Office of the Procurement Executive Review (AG Order 1085-85).		
	Flap E		
29	Protests Before Award (FAR 14.407-8).		
30	FOIA Requests Before Award (FAR 24.2).		
	Flap F		
31	Unsuccessful Bids		
32	Successful Bid(s)		
33	Notice to Unsuccessful Bidders (FAR 15.1001(c)).		

(2) REP preward file checklist:

Tab No.	Document	In file	N/A
	Flap A		
1	Solicitation Document		
2	Amendments		
3	Supervisory Solicitation Review		
	Flap B		
4	Requisition (DOJ Order 2320.1)		
	Requisition with Advance Procurement Plan (APP) number.		
	Supported by a Statement of Need and APP documentation (DOJ Order 2300.5A):		
	Pertinent page from the APP (Form DOJ 528).		
	Individual Acquisition Planning Form (Form DOJ 525 or Bureau equivalent).		
	Class Acquisition Lead Time		
	Representation Statement (Form DOJ 527 or Bureau equivalent).		
	Request to postpone APP revision and FAR 6.302-2 justification and approval.		
	Written acquisition plan (Far 7.105) and supporting Major Acquisition Planning Checklist (Form DOJ 526 or Bureau equivalent).		
	Specification review by the Bureau competition advocate.		
5	Contract Status Record		
6	Presolicitation Approvals		
	Micrographics (DOJ Order 2780.1).		
	AIS (DOJ Order 2830.1)		
	Consultant Services (DOJ Order 1304.3A).		
	Dept. of Labor Wage Determination (FAR 22.1008-1).		
	GSA Delegation of Proc. Authority (FIRMR 201-23).		
	SBA 8(a) Authority (FAR 19.8)		
	Requisitioner		
	Other:		
7	Determinations and Findings		
	Justification for Other Than Full and Open Competition (FAR 6.3).		
	Type of Contract		
	Cost Reimbursement (FAR 16.301-3).		
	Rejection of All Proposals (FAR 15.608(b)).		
	Time and Materials Type (FAR 16.601(c)).		
	Letter Contract (FAR 16.603-3)		
	Statutory Fee Limitation (FAR 15.903(d)).		
	Waiver of C/P Data (FAR 15.804-3).		
	Waiver of Audit (FAR 15.805-5)		
	Use of Options (FAR 17.205 and 206).		
	Set-Asides for S/B and LSA (FAR 19.501(b) and 20.201).		
	Performance Bond (FAR 28.103-2).		
8	Sources Sought Synopsis		

Tab No.	Document	In file	N/A
	Synopsis (FAR 5.201)		
	Waiver of Synopsis (FAR 5.202)		
9	Source List		
10	Solicitation Requests		
11	Declination to Offer		
12	Correspondence—Inquiries and Responses.		
	Flap C		
13	Notice to Late Offerors (FAR 15.412(d)).		
14	Clarifications of Offers (FAR 15.601)		
	Questions		
	Responses		
15	Technical Evaluation Report (FAR 15.608(2)).		
16	Successful Proposal (including Best and Final Offer).		
17	Cost/Price Analysis Including Audit (FAR 15.805).		
18	Competitive Range/Notice to Offeror (FAR 15.609, 15.609(c) and 15.1001(b)).		
19	Request for Best and Final Offers (FAR 15.611).		
20	Miscellaneous Correspondence		
	Flap D		
21	Summary of Negotiations (FAR 15.808).		
22	Pre-award Approvals		
	EEO Compliance Clearance (FAR 22.805).		
	Contracting Officer's Technical Representative.		
	Other:		
23	Supervisory Preaward Review		
24	Legal Review (AG Order 1085–85)		
25	Office of the Procurement Executive Review (AG Order 1085–85).		
	Flap E		
26	Debriefing Report (FAR 15.1003)		
27	Protests Before Award (FAR 14.407–8).		
28	FOIA Requests Before Award (FAR 24.2).		
29	Notice to Unsuccessful Offerors (FAR 15.1001(c)).		
	Flap F		
30	Unsuccessful Proposals (including Best and Final Offers) (file in separate folders, if necessary).		

(3) Modifications checklist:

Tab No.	Document	In File	N/A
1	Requisition (DOJ Order 2320.1) and Preliminary Notice to Exercise Option.		
	Requisition with Advence Procurement Plan (APP) number.		
	Supported by a Statement of Need and APP documentation (DOJ Order 2300.5A):		
	Pertinent page from the APP (Form DOJ 528).		
	Individual Acquisition Planning Form (Form DOJ 525 or Bureau equivalent).		
	Class Acquisition Lead Time		
	Representation Statement (Form DOJ 527 or Bureau equivalent).		
	Request to postpone APP revision and FAR 6.302–2 justification and approval.		
	Written acquisition plan (Far 7.105) and supporting Major Acquisition Planning Checklist (Form DOJ 526 or Bureau equivalent).		
	Specification review by the Bureau competition advocate.		
2	Contract Status Record		
3	Presolicitation Approvals		
	Micrographics (DOJ Order 2780.1).		
	AIS (DOJ Order 2830.1		
	Wage Determination (FAR 22.1008–1).		
	GSA Delegation of Authority (FIRMR 201–23).		
	Requisitioner		
	Other:		
4	Determinations and Findings		
	Justification for Other Than Full and Open Competition (FAR 6.3).		
	Statutory Fee Limitation (FAR 15.903(d)).		
	Waiver of C/P Data (FAR 15.804–3).		
	Waiver of Audit (FAR 15.805–5)		
5	Synopsis (FAR 5.201)		
	Waiver of Synopsis (FAR 5.202)		
6	Solicitation Document or Change Order.		
7	Correspondence—Inquiries and Responses.		
8	Technical Evaluation Report (FAR 15.608(a)(2)).		
9	Proposal or Claim for Equitable Adjustment.		
10	Cost/Price Analysis including audit (FAR 15.805).		
11	Miscellaneous Correspondence		
12	Summary of Negotiations (FAR 15.808).		
13	Pre-Award Approvals		
	EEO Compliance Clearance (FAR 22.805).		
	Contracting Officer's Technical Representative.		
	Other:		
14	Supervisory Preaward Review		
15	Legal Review (AG Order 1085–85).		
16	Office of the Procurement Executive Review (AG Order 1085–85).		
17	Transmittal Letter and Proposed Modification.		

Tab No.	Document	In File	N/A
18	Acknowledgement Letter		
19	Postaward Synopsis		
20	Modification Checklist		

(4) Contract file, award checklist:

Contractor: ——————————

Requirement: ——————————

Contract No.: ——————————

Contract Type: ——————————

Solicitation No.: ——————————

DOCUMENT

	Date filed	Cont. spec. initials
Flap A		
Item No.		
1. Contract Document/Modifications.	———	———
2. FPDS, Individual Contract Action Report (SF-279 and/or SF-279A).	———	———
3. PCS Data System Input Forms.	———	———
4. Award Distribution Checklist.	———	———
5. Award Checklist	———	———
5.1 Consolidated List of Debarred, Suspended and Ineligible Contractors (FAR 9.404(c)(5)).	———	———
Flap B		
Item No.		
6. Supporting Papers for Basic Contract.	———	———
—Award Synopsis (FAR 28.301).	———	———
—Performance Bond (FAR 5.103 and 53.301-25).	———	———
—Subcontracting Report (SF-294).	———	———
7. Protests After Award (FAR 14-407-8).	———	———
8. FOIA Requests After Award.	———	———
9. Transmittal/Acknowledgement Letters.	———	———
9.1 Contract Administration Approvals, e.g., approval of subcontracts, etc..	———	———
Flap C		
10. Supporting Papers for Modifications.	———	———
Flap D		
11. Vouchers and Related Correspondence.	———	———
Flap E		
12. Contractor's Reports	———	———
Flap F		
13. Contract Close Out Checklist (Administrative Correspondence).	———	———

I certify that this file has been reviewed and the contract is adequate for award:

Contract Specialist Date: ————

Signature: ——————————

Reviewer Title: ——————————

Date: ————

Signature: ——————————

[50 FR 4453, Jan. 30, 1985, as amended at 50 FR 29799, July 22, 1985; 52 FR 4320, Feb. 11, 1987]

Subpart 2804.9—Information Reporting to the Internal Revenue Service

SOURCE: 55 FR 14094, Apr. 16, 1990, unless otherwise noted.

2804.900 Scope of subpart.

This subpart provides policies and procedures applicable to contract information reporting to the Internal Revenue Service (IRS).

2804.901 Definitions.

Classified contract, as used in this subpart, means a contract such that the fact of the existence of such contract or the subject matter of such contract has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

Confidential contract, as used in this subpart, means a contract, the reporting of which to the IRS as required under 26 U.S.C. 6050M, would interfere with the effective conduct of a confidential law enforcement activity, such as contracts for sites for undercover operations or contracts with informants, or foreign counterintelligence activity.

2804.903 Procedures.

Bureau procurement offices shall submit their quarterly FPDS reports together with the certification required by section 2804.903-70 to the Procurement Executive in accordance with section 2804.601. The Procurement Executive will certify the consolidated FPDS data for the Department, transmit the data to the Federal Procurement Data Center (FPDC) and authorize the FPDC to make returns to the IRS on behalf of the agency.

2804.903-70 Certification.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR requires the head of every Federal executive agency to file an information return with the IRS for certain contract actions in excess of $25,000 and to certify under penalties of perjury that the information provided is, to the best of his or her belief, true, correct and complete.

(b) The head of the contracting activity or his or her delegate shall certify to the Procurement Executive, in the format specified below, under penalty of perjury, that such official has examined the information submitted by that bureau as its FPDS data, and that the data has been prepared pursuant to the requirements of Section 6050M and that, to the best of such official's knowledge and belief it is compiled from bureau records business for the purpose of making a true, correct and complete return as required by 26 U.S.C. 6050M.

(c) The following certification will be signed and dated by the head of the contracting activity, or his or her delegate, and submitted with each quarterly FPDS report from that bureau.

Certification

I, ______(Name), ______(Title) under the penalties of perjury have examined the information to be submitted by ______(Bureau) to the FPDC, for making information returns on behalf of the Department of Justice to the Internal Revenue Service, and ceritify that this information has been prepared pursuant to the requirements of section 6050M and that it is to the best of my knowledge and belief, a compilation of bureau records maintained in the normal course of business for the purpose of providing true, correct and complete returns as required by 26 U.S.C. section 6050M.

____

Signature

____

Date

2804.970 Special reporting exceptions.

(a) The Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647) amended 26 U.S.C. 6050M to allow exceptions to the reporting requirements for certain classified or confidential contracts.

(b) The head of the agency has determined that the filing of information returns, as required by 26 U.S.C. 6050M, on confidential contracts, which involve law enforcement or foreign counterintelligence activities, would interfere with the effective conduct of those confidential law enforcement or foreign counterintelligence activities, and that the special reporting exceptions added to section 6050M by The Technical and Miscellaneous Revenue Act of 1988 apply to these types of contracts.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2805—PUBLICIZING CONTRACT ACTIONS

Subpart 2805.1—Dissemination of Information

Sec.
2805.101 Methods of disseminating information.

Subpart 2805.5—Paid Advertisements

2805.502 Authority.
2805.503-70 Procedures.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4455, Jan. 30, 1985, unless otherwise noted.

Subpart 2805.1—Dissemination of Information

2805.101 Methods of disseminating information.

Each contracting activity in the Department shall designate an area for public display of solicitation notices in accordance with FAR 5.101(a)(2).

Subpart 2805.5—Paid Advertisements

This subpart provides policies and procedures for the procurement of paid advertising as covered by 5 U.S.C. 302, 44 U.S.C. 3701, 3702, and 3703, and title 7, chapter 5-25.2, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

2805.502 Authority.

(a) Pursuant to 28 CFR 0.140 the authority to approve publication of paid advertisements has been delegated to the officials listed in 2801.601(a). This authority may be redelegated as considered appropriate.

(b) The authority to approve the publication of advertisements, notices, or proposals pursuant to litigation has been delegated by memorandum by the AAG/A to the heads of the OBDs with the power of redelegation.

(c) Authority to purchase paid advertising must be granted in writing by an official delegated such authority. No advertisement, notice, or proposal will be published prior to receipt of advance written authority for such publication. No voucher for any such advertisement or publication will be paid unless there is presented, with the voucher, a copy of such written authority. Authority shall not be granted retroactively.

2805.503-70 Procedures.

(a) Agency officials exercising the authority delegated by 2805.502(a) and (b) shall do so in accordance with the procedures set forth in FAR 5.503 and those set forth below.

(b) Requests for procurement of advertising shall be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information.

(c) Paid advertisements shall be limited to publication of essential details of invitations for bids and requests for proposals including those for the sale of personal property and for the recruitment of employees.

(d) Standard Form 1143, Advertising Order, shall be used for procurement and payment of paid advertising. Procedures for payment of vouchers are contained in title 7, chapter 5-25.2, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

PART 2806—COMPETITION REQUIREMENTS

Subpart 2806.5—Competition Advocates

Sec.
2806.501 Requirement.
2806.502 Duties and responsibilities.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(e); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 29801, July 22, 1985, unless otherwise noted.

Subpart 2806.5—Competition Advocates

2806.501 Requirement.

As required by section 20 of the Office of Federal Procurement Policy Act, each executive agency must appoint an agency competition advocate and a competition advocate in each procuring activity of the executive agency. Accordingly:

(a) The competition advocate for DOJ will be located in the Office of the Deputy Assistant Attorney General, Office of Personnel and Administration.

(b) The agency head will appoint in each bureau an official to be the bureau activity competition advocate. The individuals designated may not be located in the operational procurement activity.

[50 FR 29801, July 22, 1985, as amended at 52 FR 42295, Nov. 4, 1987; 53 FR 49666, Dec. 9, 1988]

2806.502 Duties and responsibilities.

(a) The duties and responsibilities of the competition advocates are set forth in FAR 6.502. The Department's Procurement Executive will provide guidance to the competition advocates in formulating plans, goals, and procedures to achieve the goals of enhancing competition and challenging barriers to full and open competition.

(b) *Responsibilities.* (1) Within 60 days following the end of the fiscal year each competition advocate in the procuring activities will submit to the agency competition advocate an annual report. This report will provide specific information and a summary of advocacy accomplishments during the fiscal year. The information provided, combined with other available data, will provide the basis for the report in paragraph (b)(3) of this section to be submitted to Congress by the agency head in accordance with section 23 of the Office of Federal Procurement Policy Act.

(2) Within 90 days following the end of the fiscal year the agency competition advocate shall submit to the Procurement Executive a report on the competition advocacy accomplishments throughout DOJ during the preceding year and plans for the next year.

(3) Annual reports will be submitted for the fiscal years 1985 (from April 1, 1985 to September 30, 1985), 1986, 1987, 1988 and 1989.

[50 FR 29801, July 22, 1985, as amended at 52 FR 34390, Sept. 11, 1987]

PART 2807—ACQUISITION PLANNING

Subpart 2807.1—Acquisition Plans

Sec.

2807.102 Policy.
2807.103 Agency-head responsibilities.

Subpart 2807.70—End-of-Year Procurements

2807.7000 Scope of subpart.
2807.7001 Lead times and cut-off dates.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4455, Jan. 30, 1985, unless otherwise noted.

Subpart 2807.1—Acquisition Plans

2807.102 Policy.

(a) In accordance with the Office of Federal Procurement Policy, Policy Letter 81-1, Executive Order 12352, and in compliance with FAR 7.102, procurement activities of DOJ shall coordinate planning of resource utilization in conducting procurement programs. Such planning shall accomplish the following objectives:

(1) Provide for early planning of procurement actions to allow ample time for conducting competitive solicitations and to avoid unnecessary urgent requirements that generally restrict competition.

(2) Provide for a more even flow of procurement requests to procurement operations throughout a fiscal year, better using personnel resources and avoiding wasteful and hasty year-end spending.

(3) Identify identical or like requirements that can be combined under one solicitation, thereby saving manpower resources and financial resources through quantity discounts.

(b) Acquisition planning shall be accomplished in accordance with the Department's Advance Procurement

Planning System. Approval for alterations of systems or DOJ forms must be obtained from the Office of the Procurement Executive.

[50 FR 4455, Jan. 30, 1985, as amended at 50 FR 29801, July 22, 1985]

2807.103 Agency-head responsibilities.

The Department's Advanced Procurement Planning System provides that the head of an office, board, or division and the heads of the bureaus shall appoint an official to coordinate acquisition planning. The coordinator shall work with the office, board division, or bureau procurement representative in developing an approved procurement plan.

Subpart 2807.70—End-of-Year Procurements

2807.7000 Scope of subpart.

OFPP Policy Letter 81-1 requires that agencies establish lead times and firm cut-off dates for processing procurement requests that are to be obligated against expiring current year funds. The purposes of the OFPP policy are to prevent wasteful year-end spending and promote competitive contracting. The need to advise requiring activities of the lead times necessary to process a particular procurement action has become even more important with passage of the Competition in Contracting Act of 1984. This subpart provides requirements for meeting these objectives in DOJ.

[52 FR 4320, Feb. 11, 1987]

2807.7001 Lead times and cut-off dates.

(a) DOJ procurement activities shall establish lead times and cut-off dates for acceptance and processing of procurement requests that require use of expiring current year funds. Procedures implemented by the procurement activities shall include:

(1) Lead times required to process procurement requests according to the method of contracting (sealed bid or competitive proposals, etc.) and type of action (new award, modification, or option). Procurement activities may further refine the lead times in accordance with their experience and types of requirements;

(2) Firm cut-off dates beyond which a procurement request will not be accepted if the requirement is to use expiring current year funds. Cut-off dates will be issued consistent with the lead times established in paragraph (a)(1) above; and

(3) A statement that failure to submit a requisition prior to the cut-off date applicable to processing a fully competitive procurement does not, in itself, establish justification for contracting by other than full and open competition.

(b) Fourth quarter procurements.

(1) Instructions provided to Federal agencies by the Office of Management and Budget state that fourth quarter obligations should not exceed the average obligations for the first three quarters, except where seasonal requirements, essential program objectives, or lead times justify a higher level. Excessive and wasteful year-end spending can be prevented by firmly enforcing the procurement cut-off dates, the Department's Advance Procurement Planning Order, reviewing questioned procurements with procurement supervisors and appropriate program personnel and giving particular attention to fourth quarter procurement requests in areas that are particularly vulnerable to wasteful spending. In addition, chiefs of procurement activities shall ensure that their staffs are aware of OFPP Policy Letter 81-1 and the OFPP checklist for use in detecting and preventing wasteful year-end spending.

[52 FR 4320, Feb. 11, 1987]

PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
2808.000 Scope of part.

Subpart 2808.1—Excess Personal Property

2808.102-80 Procedure.

Subpart 2808.4 Ordering From Federal Supply Schedules (FSS)

2808.400-70 Renewals of purchase orders issued under Federal Supply Schedules.
2808.401-70 Use of General Services Administration (GSA) Self-Service Stores.

Sec.

Subpart 2808.8—Acquisition of Printing and Related Supplies

2808.802-70 Procedure.

Subpart 2808.11—Leasing of Motor Vehicles

2808.1102-70 Procedure.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4456, Jan. 30, 1985, unless otherwise noted.

2808.000 Scope of part.

This part deals with the acquisition of supplies and services from or through Government supply sources.

Subpart 2808.1—Excess Personal Property

2808.102-80 Procedure.

All requisitions for supplies shall be submitted to the Chief, Operations Section, Administrative Services Staff, for review to determine whether or not the requirement can be fulfilled by using excess personal property available to the Department, prior to submitting the requisition to Procurement Service.

Subpart 2808.4—Ordering From Federal Supply Schedules (FSS)

2808.400-70 Renewals of purchase orders issued under Federal Supply Schedues.

(a) To expedite renewals of purchase orders issued against FSS contracts OBD's and the EOUSA are encouraged to submit annually only one requisition which would cover all renewals for a given vendor's GSA schedule contract.

(b) In preparing renewals, consolidate items of identical make and model number, indicate aggreate quantity, and segregate as to lease renewals and maintenance renewals for DOJ equipment. Systems are not to be aggregated, but should be listed as a separate line item on the requisition and shall not be split.

2808.401-70 Use of General Services Administration (GSA) Self-Service Stores.

Policy and procedures for the use of the GSA self-service stores are contained in departmental orders.

Subpart 2808.8—Acquisition of Printing and Related Supplies

2808.802-70 Procedure.

Contracting officers shall obtain written approval from the Director, General Services Staff, JMD (the central printing authority designated to serve as liaison between the Department and the Joint Committee on Printing) before acquiring any of the items defined in FAR 8.801.

[50 FR 4456, Jan. 30, 1985, as amended at 50 FR 29801, July 22, 1985]

Subpart 2808.11—Leasing of Motor Vehicles

2808.1102-70 Procedure.

Prior to preparing solicitations for the leasing of motor vehicles, contracting officers shall ensure that the requisition for such lease has been reviewed and approved by the General Services Staff, Justice Management Division.

[50 FR 4456, Jan 30, 1985, as amended at 52 FR 34390, Sept. 11, 1987]

PART 2809—CONTRACTOR QUALIFICATIONS

Subpart 2809.4—Debarment, Suspension, and Ineligibility

Sec.
2809.400 Scope of subpart.
2809.401 Applicability.
2809.402 Policy.
2809.403 Definitions.
2809.405 Effects of listing.
2809.405-1 Continuation of current contracts.
2809.405-2 Restrictions on subcontracting.
2809.470 Responsibilities.
2809.471 Debarment and suspension decision-making process.

Subpart 2809.5—Organizational Conflicts of Interest

2809.503 Waiver.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4456, Jan. 30, 1985, unless otherwise noted.

Subpart 2809.4—Debarment, Suspension, and Ineligibility

2809.400 Scope of subpart.

This subpart:

(a) Provides for DOJ policies and procedures in making debarment and suspension decisions and assigns responsibilities in making these decisions.

(b) Establishes the Procurement Executive, JMD as the debarring and suspending official in DOJ.

NOTE: FAR 9.4 does not provide procedures for declaring Government contractors ineligible. The GSA will list contractors who are ineligible pursuant to statutory, Executive Order, or regulatory authority other than FAR subpart 9.4. This FAR and JAR subpart does prescribe policies regarding the effect of such listing.

[50 FR 4456, Jan. 30, 1985, as amended at 52 FR 34390, Sept. 11, 1987]

2809.401 Applicability.

This subpart is applicable to all contracting activities in the offices, boards, divisions, and bureaus (OBDBs) of DOJ and for contracts involving personal property and non-personal services including construction and leases of real property. This subpart does not apply to grants or other forms of Federal assistance.

2809.402 Policy.

Debarment and suspension actions are a means to ensure that agencies contract only with responsible business concerns and individuals. Contracting activities shall:

(a) Consider debarment or suspension of a contractor when cause is hown as listed under FAR 9.406-2 debarment) and FAR 9.407-2 (suspenion).

(b) Consult the GSA Consolidated ist of Debarred, Suspended, or Ineliible Contractors prior to soliciting ffers from, awarding contracts to, reewing or extending contracts, or conenting to subcontracts with contracors on the GSA Consolidated List. xceptions will be granted only for compelling reasons and in accordance with FAR 9.405(a).

2809.403 Definitions.

The definitions of the principal terms used in this subpart, i.e., debarment, suspension, ineligible, contractor, and debarring and suspending official, are the same as in FAR 9.403.

2809.405 Effects of listing.

2809.405-1 Continuation of current contracts.

In accordance with FAR 9.405-1, contracting activities may continue contracts or subcontracts in existence at the time a contractor is suspended or debarred unless it is determined that termination of the contract is in the best interest of the Government. In making this determination contracting activities shall consider the seriousness of the act or omission leading to the debarment or suspension, the effect of debarment or suspension on the contractor's ability to continue operations, and the Department's ability to safeguard its interests and receive satisfactory performance and for compelling reasons and in accordance with FAR 9.405(a).

2809.405-2 Restrictions on subcontracting.

FAR 9.405-2 provides that agencies shall not consent to subcontracts with debarred, suspended, or ineligible contractors where such consent is required by the contract. FAR subpart 44.2, Consent to Subcontracts, provides guidance on when to include a clause in prime contracts for review of subcontracts.

2809.470 Responsibilities.

(a) Contracting activities in the OBDBs shall:

(1) Be familiar with the policies and procedures concerning debarment, suspension, and ineligibility as set forth in FAR subpart 9.4 and this subpart.

(2) Provide and effective system within their activity to ensure that contracting staff consult the GSA Consolidated List of Debarred, Suspended, or Ineligible Contractors prior to soliciting offers from, awarding or extending contracts to, or consenting

to subcontracts with contractors on the list.

(3) Consider recommending debarment or suspension of a contractor when cause exists under FAR 9.406-2 (debarment) and FAR 9.407-2 (suspension). Existence of cause for debarment or suspension does not necessarily require that the contractor be debarred or suspended. Contracting activities must consider the seriousness of the contractor's acts or omissions and any mitigating circumstances. Contracting staffs should consult with their appropriate legal counsel prior to making a decision to initiate debarment or suspension proceedings. If a determination is made that available facts do not justify beginning debarment or suspension proceedings, the file should be documented accordingly. This determination should be subject to reconsiderations if new information or additional fact-finding so justifies.

(4) Immediately prepare a notice in accordance with FAR 9.406-3(a) (debarment) or FAR 9.407-3(c) (suspension) if a decision is made to initiate debarment and/or suspension of a contractor. The draft notice along with the administrative file containing all relevant facts and analysis shall be forwarded to the Procurement Executive, as the debarring and suspending official, following review by the activity's legal counsel and procurement head.

(b) The DOJ Procurement Executive, as the debarring and suspending official, shall:

(1) Review the notice and administrative file for sufficiency and provide for review by other DOJ officials as considered appropriate.

(2) Give the contractor prompt notice of the proposed debarment or suspension if he or she so decides, in accordance with FAR 9.406-3(c) (debarment) or FAR 9.407-3(c) (suspension).

(3) Direct additional fact-finding as necessary when material facts are in dispute. Fact-finding over disputed issues of fact in debarment and suspension proceedings may be conducted by the General Services Administration Board of Contract Appeals (GSBCA) in accordance with the signed agreement between the Department and GSBCA if requested by either the government or the contractor.

(4) Notify the contractor of the final decision to debar or suspend, including a decision not to debar or suspend, in accordance with FAR 9.406-3(c) (debarment) and FAR 9.407-3(c) (suspension).

(c) Other responsibilities of the DOJ Procurement Executive.

(1) Provide notification to GSA within five working days after debarring or suspending a contractor or modifying or rescinding such an action of the information set forth in FAR 9.404(c).

(2) Maintain agencywide records of debarred or suspended contractors in accordance with FAR 9.404(c)(4).

(3) In accordance with FAR 9.405(a), approve determinations submitted by contracting activities establishing compelling reasons to contract or consent to a subcontractor with a contractor on a current debarred or suspended list. (DOJ officials do not have the authority to make exceptions for contractors declared ineligible.)

(4) Provide interim notification to the OBDBs of contractors debarred or suspended pending inclusion into the GSA Consolidated List and coordinate among the OBDBs annual subscriptions to the GSA list.

[50 FR 4456, Jan. 30, 1985, as amended at 52 FR 34390, Sept. 11, 1987]

2809.471 Debarment and suspension decision-making process.

Debarment or suspension of a contractor, whether a firm on an individual, is a serious action. In order to ensure fairness and an opportunity for the affected contractor to present arguments and provide information in opposition to a proposed debarment or suspension, the procedures outlined in FAR 9.406-3 (debarment) and FAR 9.407-3 (suspension) will be strictly adhered to in the decision-making process.

Subpart 2809.5—Organizational Conflicts of Interest

2809.503 Waiver.

(a) Waiver authority granted under FAR 9.503 is delegated by this subpart to the DOJ officials listed in 2801.601(a). This authority may not be redelegated.

(b) Requests for waivers shall be prepared by the contracting officer and shall include the following:

(1) A complete description of the organizational conflict;

(2) A discussion of why the conflict cannot be avoided, neutralized, or mitigated in accordance with the procedures in FAR 9.507;

(3) The benefits to the Government and to the contractor in approving the waiver; and,

(4) The potential or actual negative or detrimental effects of approving the waiver.

PART 2810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
2810.000 Scope of part.
2810.004-70 "Brand name of equal" purchase description.
2810.007 Deviations.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4457, Jan. 30, 1985, unless otherwise noted.

2810.000 Scope of part.

This part prescribes policies and procedures for using specifications, standards, and other purchase descriptions in the acquisition process.

810.004-70 "Brand name or equal" purchase description.

(a) A "brand name or equal" purchase description shall be used only under the conditions listed below and in FAR 10.004(b)(3) and in accordance with the policies and procedures in this Subpart.

(1) When a suitable formal Government specification, standard, or industry standard approved for agency use not available and a purchase description meeting the general requirements of FAR 10.004 cannot be prepared because:

(i) Construction or composition of the product to be procured is too technically involved;

(ii) Public exigency precludes timely development; or,

(iii) It is impractical or uneconomical to prepare a purchase description.

(2) When purchasing items for authorized resale.

(b) The term "brand name product" means a commercial product described by a brand name and make or model number or other appropriate nomenclature by which that product is offered for sale to the public by the particular manufacturer, producer, or distributor. When using a "brand name or equal" purchase description all known acceptable brand name products should be listed in the solicitation. When a "brand name or equal" purchase description is used to describe a primary item or major component, prospective offerors must be given the opportunity to offer products other than those specifically referenced by brand name, if those other products will meet the needs of the Government in essentially the same manner as those referenced as brand name in the solicitation. If modifications to standard products are anticipated to meet the purchase description requirements, a minimum of 30 calendar days shall be allowed between the issuance of the solicitation and the opening of bids or receipt of proposals, provided that periods of less than 30 calendar days may be set only in cases where one of the statutory exceptions to publicizing the procurement in the *Commerce Business Daily* applies and when the contracting officer has reason to believe that bidders can bid effectively on the basis of a shorter period.

(c) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the products referenced as brand name which are essential to the Government, and should contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the required item;

(2) Applicable make, model, or catalog number for each brand name product referenced and identification of the commercial catalog in which it appears; and,

(3) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if possible).

(d) In "brand name or equal" solicitations the product referenced as "brand name" must be regularly offered for sale to the public.

(e) When a "brand name or equal" purchase description is used the contracting officer shall note in the contract file the reasons for using this purchase description.

(f)(1) When a "brand name or equal" purchase description is used in a solicitation, except for component parts or accessories of an end item for which the contracting officer determined that the application of the following clause would be impractical, the following clause shall be inserted after each item so described in the solicitation for completion by the offeror.

Bidding On:

Manufacturer's Name: ____________
Brand: ____________
No.: ____________

(2) In addition, the clause set forth in section 2852.210-70 entitled "Brand Name or Equal" shall be inserted into all solicitations for which this type of purchase description is used.

2810.007 Deviations.

Heads of contracting activities are authorized to approve deviations and exceptions to specifications or standards listed in the Index of Federal Specifications and Standards when the exceptions listed in FAR 10.006 do not apply, in accordance with the reporting and other requirements of FAR 10.007. The Office of the Procurement Executive shall be notified, in writing, within 30 days of the approval of each deviation or exception approved.

[50 FR 4457, Jan. 30, 1985, as amended at 50 FR 29801, July 22, 1985]

PART 2812—CONTRACT DELIVERY OR PERFORMANCE

Sec.
2812.000 Scope of part.

Subpart 2812.1—Extension of Delivery or Performance Schedules

2812.170 Policy.

Subpart 2812.2—Liquidated Damages

2812.270 Procedure.

Subpart 2812.3—Priorities and Allocations

2812.303 Procedures.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4458, Jan. 30, 1985, unless otherwise noted.

2812.000 Scope of part.

This part prescribes policies and procedures relating to delivery or performance under contracts for supplies, services, and construction.

Subpart 2812.1—Extension of Delivery or Performance Schedules

2812.170 Policy.

It is the policy of DOJ to ensure that contract delivery schedules are reasonable, realistic, and meet the requirements of the acquisition. However, in some instances when the contractor fails to deliver in a timely manner, it may be necessary for the Government to allow the contractor to continue performance. Under these circumstances, if the delay is caused by conditions which would not be considered "excusable delays" (as defined in the clauses listed in FAR 52.249), the contracting officer must secure consideration for the Government's forbearance in extending the delivery schedule. In addition, delivery schedules should not be allowed to slip beyond two weeks without contracting officers taking all actions necessary to retain the Government's rights.

Subpart 2812.2—Liquidated Damages

2812.270 Procedure.

In the event it is desirable to make a remission of liquidated damages, assessed against a contractor for delayed performance, the contracting officer shall prepare a memorandum for the signature of the AAG/A and subsequent transmittal to the Comptroller General, which sets forth the rationale for the proposed remission of liquidated damages together with all pertinent background data upon which the recommendation that such damages be remitted to the contractor. This memorandum must be coordinated with the JMD Office of General Counsel prior to forwarding to the AAG/A for signature.

Subpart 2812.3—Priorities and Allocations

2812.303 Procedures

(a) The Procurement Executive, in accordance with paragraph 1.e., of the Procurement Executive Charter, issued with Attorney General Order 1085-85, is the agency official delegated authority to exercise priority authority on behalf of the Department. Any request for a priority rating on a contract or order must be submitted to the Office of the Procurement Executive in accordance with the procedures in this subpart.

(1) The requesting activity shall submit to the Procurement Executive a description of the supplies or services requiring a priority rating and a complete justification for the necessity of a rated order including the method and type of contract and the anticipated award date. The justification must also state the level of priority rating requested and comply with the requirements of the Defense Priorities and Allocations System (OPAS) (15 CFR part 350).

(2) Upon receipt the Office of the Procurement Executive shall review the request for completeness and establish appropriate liaison with the Department of Commerce (DOC), the administering agency. Depending on the nature of the requirement, the OPE may schedule a meeting with DOC officials to present the proposal. In such cases, a representative from the requiring activity may be requested to attend.

(3) DOJ activities requesting rated orders that concern classified material shall call the Procurement Executive before submitting their request to ensure appropriate transmission and handling between the requesting activity and the Office of the Procurement Executive.

[52 FR 4320, Feb. 11, 1987]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2813.4—Imprest Fund

Sec.

2813.403-80 Agency responsibilities.
2813.404-70 Conditions for use.

Subpart 2813.5—Purchase Orders

2813.505 Purchase order and related forms.
2813.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
2813.505-370 Standard Form 44.
2813.570 Content of purchase order files.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4458, Jan. 30, 1985, unless otherwise noted.

Subpart 2813.4—Imprest Fund

2813.403-80 Agency responsibilities.

Regulations governing the operation and procedures of the imprest fund for the OBDs are contained in OBD internal regulations and Accounting Operations Instructions. Individuals delegated the authority to withdraw from the imprest fund are further subject to the limitations contained in their delegation memorandum.

2813.404-70 Conditions for use.

The Department of the Treasury has approved for OBDBs limitations on transactions of varying amounts depending on needs. These limitations are maintained in OBDB internal regulations and procedures.

Subpart 2813.5—Purchase Orders

2813.505 Purchase order and related forms.

2813.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

The JMD Form 422 is authorized for use in the OBDs as a substitute for Optional Form 347. Bureaus may prescribe an equivalent form to meet their needs subject to the approval of the head of the procuring activity and in accordance with FAR 13.505-2 and FAR 13.507, Clauses.

2813.505-370 Standard Form 44.

(a) Purchasing offices using the SF 44 will be responsible for instructing authorized users as to the limitations and procedures for use of the SF 44 as outlined in FAR 13.505-3.

(b) Since the SF 44 is an accountable form, a record shall be maintained of: serial numbers of the forms; to whom issued; and, the date issued. SF 44's shall be kept securely under lock and key to prevent unauthorized use. A reservation of funds shall be established to cover total anticipated expenditures prior to use of the SF 44.

2813.570 Content of purchase order files.

(a) Is the policy of the Department that all purchase order files contain sufficient documentation to accurately portray the circumstances surrounding the purchase action. Each purchase order file shall contain the following completed checklist, or one similar, which contains as a minimum the documents and information that are indicated on the checklist.

(b) Small purchase documentation checklist. The purpose of this small purchase documentation checklist is to assure that all required documentation has been made and a record of that documentation is kept in the small purchase file. The checklist should be completed by responding yes, no or N/A. "No" responses must be explained on a separate sheet of paper which must be attached to the checklist.

(1) Presolicitation:

Are sufficient funds available to cover all purchases? ....

Have excess listings, FPI, CPBOSH, GSA, and FSS been reviewed prior to soliciting open market sources? (FAR Part 8) ....

Were all necessary waivers, clearances, or exceptions obtained? (FAR 8.404-3. 8.605, 8.706) ....

Was the requirement synopsized or posted? (FAR 5.101, FIRMR 201-32.206(f)) ....

Was the requirement set aside for small business? (FAR 13.105) ....

If sole source, is the justification clearly documented? (FAR 13.106(b)) ....

Is the reason for not obtaining competition clearly documented? (FAR 13.106(c)(2)) ....

Is all quotation information properly documented? (FAR 13.106(c)(3)) ....

Has a wage determination been obtained? (Service contracts over $2500 FAR 22.1002-1) ....

(2) Award:

Is the price paid fair and reasonable? (FAR 13.106(c)(1)) ....

Is the vendor currently suspended or debarred? (FAR 9.405) ....

Have all discounts, time and quantity, been properly recorded? ....

Are delivery terms and destination points clear and concise? (FAR 47.303) ....

Is all correspondence answered? ....

Has a determination of responsibility been made? (FAR 9.103) ....

Have all variances to the specifications been approved by the requisitioner? ....

If the award is over $25,000 was an ICAR prepared and reported to the ACF? (FAR 4.601) ....

[54 FR 40878, Oct. 4, 1989]

PART 2814—SEALED BIDDING

ec.

814.000 Scope of part.

Subpart 2814.4—Opening of Bids and Award of Contract

814.401 Receipt and safeguarding of bids.
814.402 Opening of bids.
814.406-370 Other mistakes disclosed before award.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4459, Jan. 30, 1985, unless otherwise noted.

2814.000 Scope of part.

This part prescribes requirements, policies, and procedures for the solicitation, evaluation, and award of contracts for supplies, services, and construction under the sealed bidding method.

(Approved by the Office of Management and Budget under control number 1105-0028)

[50 FR 4459, Jan. 30, 1985, as amended at 50 FR 29801, July 22, 1985]

Subpart 2814.4—Opening of Bids and Award of Contract

2814.401 Receipt and safeguarding of bids.

All bids, including amendments to Invitation For Bids, received before the time set for opening shall be kept secure, and shall remain unopened in locked safes.

2814.402 Opening of bids.

The contracting officer responsible for issuing the solicitation is also responsible for making all necessary arrangements for the opening and recording of bids in accordance with FAR 14.402.

2814.406-370 Other mistakes disclosed before award.

(a) The authority to make determinations under paragraphs (a), (b), (c), and (d) of FAR Subsection 14.406-3 is delegated to those individuals listed in subpart 2801.6, Contracting Authority and Responsibility, section 2801.601. Such authority may be redelegated in accordance with FAR 14.406-3(e).

(b) Copies of all records, documentation, and determinations made with respect to mistakes in bids shall be kept in the contract file to which they pertain.

(c) The following procedures shall be followed when submitting doubtful cases of mistakes in bids to the Comptroller General for an advance decision.

(1) Requests for advance decisions submitted to the Comptroller General in cases of mistakes in bids shall be made by those individuals in para-

graph (a) of this section with the authority to make determinations under this subpart.

(2) Requests for advance decisions shall be in writing, dated, signed by the requestor, addressed to the Comptroller General of the United States, General Accounting Office, Washington, DC 20548, and contain the following:

(i) The name and address of the party requesting the decision;

(ii) A statement of the question to be decided, a presentation of all relevant facts, and a statement of the requesting party's position with respect to the question; and,

(iii) Copies of all pertinent records and supporting documentation.

PART 2815—CONTRACTING BY NEGOTIATION

Subpart 2815.4—Solicitation and Receipt of Proposals and Quotations

Sec.
2815.405 Solicitations for informational and planning purposes.
2815.408 Issuing solicitations.
2815.411 Receipt of proposals and quotations.

Subpart 2815.5—Unsolicited Proposals

2815.506 Agency procedures.

Supbart 2815.8—Price Negotiation

2815.803-70 General.
2815.804-370 Waiver of submission of certified cost or pricing data.
2815.805-570 Field pricing support.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4459, Jan. 30, 1985, unless otherwise noted.

Subpart 2815.4—Solicitation and Receipt of Proposals and Quotations

2815.405 Solicitations for informational and planning purposes.

When a solicitation for informational or planning purposes is to be issued, the contracting officer shall make a written determination that such solicitation is justified. This determination shall be approved at one level above the contracting officer. Such approval shall be signified by the signature the appropriate official on the dete mination.

(Approved by the Office of Managemen and Budget under control number 110 0028)

2815.408 Issuing solicitations.

Solicitations involving classified in formation shall be handled in accord ance with the policies and procedure contained in departmental and othe OBDB prescribed policies and regulations that supplement Departmental regulations. Such supplemental regulations must have the prior approval of the AAG/A before implementation in accordance with the Departmental regulations.

(Approved by the Office of Management and Budget under control number 1105-0028)

2815.411 Receipt of proposals and quotations.

Classified proposals and quotations shall be handled in accordance with agency regulations and any supplemental directives or orders implemented by the OBDBs.

Subpart 2815.5—Unsolicited Proposals

2815.506 Agency procedures.

(a) Each contracting activity of the Department as defined in 2802.1(a) shall designate a point of contact for the receipt and handling of unsolicited proposals. Generally, the official designated shall be the chief of the contracting office as defined in 2802.1(f) or immediate subordinate.

(b) The following points of contact have been designated:

(1) For the OBDs—The Assistant Director, Procurement Service, PCS.

(c) The designated point of contact for each contracting activity shall provide for and coordinate receipt, review, evaluation, and final disposition of unsolicited proposals in accordance with FAR 15.506 through 15.509.

(d) The contracting officer shall advise the members of the evaluation committee of the Standards of Conduct contained in 28 CFR part 45.

Each member of the evaluation committee shall certify in writing that he/she has no apparent or actual conflict of interest. Committee members who become aware of a conflict of interest during the course of the proceedings shall report such conflicts, whether real or apparent, to the contracting officer immediately following such awareness. The contracting officer shall take immediate action to dismiss the committee member and appoint a replacement. If the contracting officer determines that dismissal is not necessary, such determination shall be made in writing and approved by the head of the contracting activity.

Subpart 2815.8—Price Negotiation

2815.803-70 General.

In a contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions to negotiate a reasonable price or profit or fee without success, the contracting officer shall then refer the contract action to the Office of the Procurement Executive for the OBD's, or to the appropriate official for their agency listed in 2801.601(a) or their designee in accordance with bureau procedures.

[50 FR 4459, Jan. 30, 1985, as amended at 50 FR 29801, July 22, 1985]

2815.804-370 Waiver of submission of certified cost or pricing data.

In exceptional cases,the requirement for submission of certified cost or pricing data may be waived. The authorization to waive such requirement shall be in writing and shall set forth the relevant circumstances, including reasons for granting such waiver and the contracting officer's recommendation. The authorization shall be approved by the appropriate agency officials listed in 2801.601(a) or his/her designee in accordance with agency procedures.

2815.805-570 Field pricing support.

Field pricing support is available to the OBDB's through the Audit Staff, Justice Management Division. All requests for audit assistance shall be directed to the Director, Audit Staff, Justice Management Division, Room 1600, Skyline Place 1, 5205 Leesburg Pike, Falls Church, Virginia 22041.

PART 2816—TYPES OF CONTRACTS

Sec.
2816.000 Scope of part.

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2816.603 Letter contracts.
2816.603-270 Application.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

2816.000 Scope of part.

This part describes types of contracts that may be used in acquisitions other than small purchases under FAR part 13 and part 2813 of this chapter. It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition.

[50 FR 4461, Jan. 30, 1985]

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2816.603 Letter contracts.

2816.603-270 Application.

In cases where the contracting officer and the contractor cannot negotiate the definitization of a letter contract within 180 days after the date of the letter contract, or before completion of 40 percent of the work to be performed, the contracting officer may, with the written approval of the head of the contracting activity, revise and extend the definitization schedule. However, in no event shall the extension of the definitization schedule extend beyond the lesser of: An additional 180 day period or the completion of 80 percent of the work to be performed. If at the end of the extension the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach an agreement on price or fee, the procedures set forth in FAR 52.216-25, FAR 16.603-2, 15.8, and Part 31 shall be followed as applicable.

[50 FR 4461, Jan. 30, 1985]

PART 2817—SPECIAL CONTRACTING METHODS

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2817.5—Interagency Acquisitions Under the Economy Act

2817.502-70 General.

For the purposes of FAR 17.502, the head of the requesting agency responsible for making the required written determination shall be the individuals listed in 2801.601(a) or their designee.

[50 FR 4462, Jan. 30, 1985]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2819—SMALL AND DISADVANTAGED BUSINESS CONCERNS

Subpart 2819.2—Policies

Sec.
2819.201 General policy.

Subpart 2819.5—Set-Asides for Small Business

2819.506 Withdrawing or modifying set-asides.

AUTHORITY: 28 U.S.C. 509 and 510; 15 U.S.C. 644(k); 28 CFR 0.18(a)(4).

SOURCE: 50 FR 4462, Jan. 30, 1985, unless otherwise noted.

Subpart 2819.2—Policies

2819.201 General policy.

(a) The Office of Small and Disadvantaged Business Utilization is organizationally attached to the Office of the Deputy Attorney General in accordance with 28 CFR 0.18(a).

(b) The Director, Office of Small and Disadvantaged Business Utilization is responsible for the administration of the DOJ small and disadvantaged business programs in accordance with the duties described in 28 CFR 0.18(a).

Subpart 2819.5—Set-Asides for Small Business

SOURCE: 54 FR 40878, Oct. 4, 1989, unless otherwise noted.

2819.506 Withdrawing or modifying set-asides.

Before a contracting officer may withdrawn or modify a small business set-aside, the contracting officer shall seek the concurrence of the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). If the contracting officer and the Director, OSDBU, are unable to agree on the proposed withdrawal or modification, the Director, OSDBU shall forward the matter to the Deputy Attorney General for resolution.

PART 2822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4462, Jan. 30, 1985, unless otherwise noted.

Subpart 2822.1—Basic Labor Policies

2822.103-4 Overtime approvals.

The inclusion of a dollar amount greater than zero in paragraph (a) of the FAR clause 52.222-2, Payment for overtime premiums, must be approved at a level above the contracting officer. Such approval shall be signified by the signature of the approving official on the contracting officer's written determination made in accordance with FAR 22.103-4.

PART 2824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

AUTHORITY: 28 U.S.C. 510; 5 U.S.C. 301, 552.

2824.202 Policy.

Procedures for processing FOIA/PA requests for JMD records are set forth in departmental regulations and 28 CFR part 16.

[50 FR 4462, Jan. 30, 1985]

PART 2825—FOREIGN ACQUISITIONS

Subpart 2825.1—Buy American Act—Supplies

Sec.
2825.102-70 Policy.
2825.105-70 Evaluating offers.
2825.108-70 Excepted articles, materials, and supplies.

Subpart 2825.2—Buy American Act—Construction Materials

2825.202-70 Policy.
2825.203-70 Evaluating offers.

Subpart 2825.3—Balance of Payments Program

2825.302-70 Policy.

Sec.

Subpart 2825.9—Omission of the Examination of Records Clause

2825.903-70 Conditions for omission.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c), 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4462, Jan. 30, 1985, unless otherwise noted.

Subpart 2825.1—Buy American Act—Supplies

2825.102-70 Policy.

(a) The agency officials authorized to make determinations under FAR 25.102(a)(3) that domestic preference would be inconsistent with the public interest are those individuals listed in 2801.601(a). Determinations made under this authority shall cite the rationale supporting the decision not to apply the domestic preference criteria and shall be reviewed and concurred in by the contracting activity's procurement counsel prior to approval by the appropriate agency official.

(b) The agency officials authorized to make determinations under FAR 25.102(a)(4) are the officials referenced in paragraph (a) of this section or their designees. Determinations made under this subpart shall cite the rationale supporting the determination and shall be reviewed and concurred in by the contracting activity's procurement counsel prior to approval by the appropriate agency official.

2825.105-70 Evaluating offers.

The agency officials authorized to make a determination that the offered price of a domestic end product is unreasonable when the lowest priced acceptable domestic offer exceeds the lowest priced acceptable foreign offer inclusive of duty when the factors set forth in FAR 25.105 have been applied, are those officials listed in 2801.601(a).

2825.108-70 Excepted articles, materials, and supplies.

The agency officials cited in 2825.102-70(b) and 2825.202-70(b) who are responsible for making the determinations authorized under those sections shall be responsible for providing the notification of excepted articles, materials, and supplies required by FAR 25.108(b) and (c).

Subpart 2825.2—Buy American Act—Construction Materials

2825.202-70 Policy.

(a) The agency officials authorized to make determinations under FAR 25.202(a)(2) that the use of a particular construction material would be impracticable are those individuals listed in 2801.601(a). Determinations made under this authority shall cite the rationale supporting the determination and shall be reviewed and concurred in by the contracting activity's procurement counsel prior to approval by the appropriate agency official.

(b) The agency officials authorized to make determinations under FAR 25.202(a)(3) are the officials referenced in paragraph (a) of this section or their designees. Determinations made under this subpart shall cite the rationale supporting the determination and shall be reviewed and concurred in by the agency's procurement counsel prior to approval by the appropriate agency official.

2825.203-70 Evaluating offers.

The agency officials authorized to make a determination that using a particular domestic construction material would unreasonably increase the cost of the acquisition or would be impracticable are those officials listed in 2801.601(a).

Subpart 2825.3—Balance of Payments Program

2825.302-70 Policy.

The agency officials authorized to make determinations under FAR 25.302(b)(3), as well as authorize the use of a differential greater than 50 percent for the evaluation of domestic and foreign offers under the Balance of Payments Program, are those officials listed in 2801.601(a) or their designees. All determinations made under this part shall be in writing and shall set forth the facts and circumstances supporting the determination. Determinations shall be reviewed and concurred in by the contracting activity's procurement counsel. Authorizations to use a differential greater than 50 percent for the evaluation of domestic and foreign offers under the Balance of Payments Program (ref. FAR 25.302(c) and 25.303(b)) shall also require a written determination.

Subpart 2825.9—Omission of the Examination of Records Clause

2825.903-70 Conditions for omission.

The agency officials authorized to make determinations under FAR 25.903(a)(1) are those individuals listed in 2801.601(a). All determinations made under this authority shall conform to FAR 25.904 and be reviewed and concurred in by the contracting activity's procurement counsel prior to being approved by the authorized agency official.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2828—BONDS AND INSURANCE

Sec.
2828.000 Scope of part.

Subpart 2828.1—Bonds

2828.105 Other types of bonds.
2828.106-270 Substitution of surety bonds.

Subpart 2828.2—Sureties

2828.203 Options in lieu of sureties.

Subpart 2828.3—Insurance

2828.307 Group insurance plans.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4463, Jan. 30, 1985, unless otherwise noted.

2828.000 Scope of part.

This part prescribes requirements for obtaining financial protection against damages under advertised and negotiated contracts. It covers bid guarantees, bonds, sureties, and insurance. The terms "bid" and "bidders" as used in this part include "proposal" and "offerors."

Subpart 2828.1—Bonds

2828.105 Other types of bonds.

The head of the contracting activity may approve the use of other types of bonds in connection with acquiring particular supplies or services. These types include advance payments bonds and patent infringement bonds. When the contracting officer determines in writing that it is in the Government's best interest to secure either type of bond, he shall submit his written determination which sets forth the pertinent circumstances and the rationale for the necessity of securing such bonds, to the head of the contracting activity for approval.

2828.106-270 Substitution of surety bonds.

(a) A new surety bond covering all or part of the obligations on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity.

(b) When the contracting officer determines in writing that it is in the Government's best interest to substitute sureties he will set forth his rationale in the determination and submit it to the head of the contracting activity for approval.

(c) When so approved and authorized by the head of the contracting activity, the contracting officer shall notify the principal and surety of the original bond, that the original bond will not be considered as security for any default occurring after the date of acceptance of the new bond.

Subpart 2828.2—Sureties

2828.203 Options in lieu of sureties.

When contractors submit any of the types of security described in FAR 28.203 in lieu of furnishing sureties, the contracting officer shall enter into an agreement with the contractor covering a bank account, and suitable covenants protecting the Government's interest, in which the securities will be deposited to protect against their loss during the period of the bond obligation.

Subpart 2828.3—Insurance

2828.307 Group insurance plans.

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan to the contracting officer for review. During review, the contracting officer should utilize all sources of information available such as audit, industry practices, etc., to determine that acceptance of the group insurance plan, as submitted, is in the Government's best interest, prior to submitting the determination and the plan to the head of the contracting activity for approval.

PART 2829—TAXES

Sec.
2829.000 Scope of part.

Subpart 2829.1—General

2829.101-70 Resolving tax problems.

Subpart 2829.3—State and Local Taxes

2829.303-70 Application of State and local taxes to government contractors and subcontractors.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4463, Jan. 30, 1985, unless otherwise noted.

2829.000 Scope of part.

This part prescribes policies and procedures for (a) resolving tax problems and (b) asserting immunity or exemption from taxes. It provides general policy and guidance for DOJ personnel.

Subpart 2829.1—General

2829.101-70 Resolving tax problems.

Agency designated legal counsel is responsible for resolving tax issues which affect the agency.

Subpart 2829.3—State and Local Taxes

2829.303-70 Application of State and local taxes to government contractors and subcontractors.

(a) It is DOJ policy that DOJ contracts shall not contain clauses expressly designating prime contractors as agents of the Government for the purpose of avoiding State and local taxes.

(b) Although circumstances may exist under which a contractor is an agent of the Government, even in the absence of a contract clause expressly designating a contractor as such, these circumstances should be extremely rare. Before any DOJ procuring activity may contend that any of its contractors are agents of the Government for the purpose of claiming immunity from State and local sales and use taxes, the matter will be referred to the AAG/A for review, and approval to ensure that DOJ policy is complied with and that the procuring activity's contention is fully in accordance with the pertinent legal principles and precedents. Each case forwarded will be reviewed by the head of the contracting activity before referral to the AAG/A. The referral will include all pertinent data on which the procuring activity's contention is based, together with a thorough analysis of all relevant legal precedents.

(c) Whenever clauses, procedures, and business practices are cited by DOJ procurring activities to support the contention that a contractor is an agent of the Government for the purpose of immunity from a State or local sales or use tax, contracting activities should whenever possible, devise alternative clauses, procedures, and practices for future use which will accomplish their intended purpose without providing the basis for contention that the contractor is an agent of the Government for the purpose of immunity from State and local sales or use taxes. Any referral to the AAG/A for approval under this subpart shall include comments on the extent to which alternative clauses, procedures, or practices may be utilized to accomplish the intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from State and local sales or use taxes.

PART 2830—COST ACCOUNTING STANDARDS

Sec.
2830.000 Scope of part.

Subpart 2830.2—Disclosure Requirements

2830.201-270 Impracticality of submission.

Subpart 2830.3—Cost Accounting Standards Contract Requirements

2830.304-70 Waiver.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4464, Jan. 30, 1985, unless otherwise noted.

2830.000 Scope of part.

This part describes policies and procedures for applying the Cost Accounting Standards Board (CASB) standards and regulations which the Administrator of the General Services Administration, as a matter of policy, has directed to be applied to certain nondefense contracts. This part does not apply to formally advertised contracts or to any contract with a small business concern (see FAR 30.301(b) for other exemptions).

Subpart 2830.2—Disclosure Requirements

2830.201-270 Impracticality of submission.

When the contracting officer has determined that it is impractical to secure a Disclosure Statement, as required under FAR 30.2, he will document the reasons and rationale for such impracticability and forward the determination, and an explanatory cover letter which sets forth the pertinent circumstance and details the contracting officer's attempts to secure such Disclosure Statement, to the Office of the Procurement Executive for review of the documentation prior to forwarding it to the AAG/A for signature.

[50 FR 4464, Jan. 30, 1985, as amended at 50 FR 29808, July 22, 1985]

Subpart 2830.3—Cost Accounting Standards Contract Requirements

2830.304-70 Waiver.

All requests for a waiver of the Cost Accounting Standards requirements shall be forwarded through the DOJ Procurement Executive to the AAG/A after the contracting officer has made the determination required by FAR 30.304(a).

PART 2831—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

2831.000 Scope of part.

Subpart 2831.1—Applicability

2831.101-70 Objectives.
2831.109-70 Advance agreements.

Sec.

Subpart 2831.2—Contracts With Commercial Organizations

2831.205 Selected costs.
2831.205-3270 Precontract costs.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4464, Jan. 30, 1985, unless otherwise noted.

2831.000 Scope of part.

This part contains cost principles and procedures for (a) the pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed and (b) the determination, negotiation, or allowance of costs when required by a contract clause.

Subpart 2831.1—Applicability

2831.101-70 Objectives.

(a) The DOJ Procurement Executive is the AAG/A's designee with respect to the granting of individual deviations to the cost principles of FAR part 31. All requests for individual deviations must cite the facts and circumstances surrounding the request as well as attempts negotiate contractor compliance.

(b) Requests for class deviations from the cost principles set forth in FAR part 31 will be forwarded through the Office of the Procurement Executive prior to submission to the Civilian Agency Acquisition Counsel. Requests must contain the information required in paragraph (a) of this section.

[50 FR 4464, Jan. 30, 1985, as amended at 50 FR 29809, July 22, 1985]

2831.109-70 Advance agreements.

(a) The DOJ and bureau contracting officers are encouraged to negotiate advance agreements concerning the treatment of special or unusual costs to avoid possible subsequent disputes or disallowance of costs based upon unreasonableness or nonallowability. All such agreements shall be negotiated prior to the incurring of such costs by the contractor and in accordance with FAR 31.109. Contracting officers are not authorized to agree to a treatment of costs which would be inconsistent with FAR part 31.

(b) Prior to negotiating an advance agreement, contracting officers shall make a written determination setting forth the reasons and rationale for entering into such advance agreement. In addition, the determination will set forth the nature, the duration, and which contract or contracts are covered by the proposed agreement. All determinations required by this subpart will be reviewed and approved at a level above the contracting officer prior to negotiation of the proposed agreement. The approved determination will be placed in the contract file.

(c) All advance agreements shall be in writing and shall set forth the nature, duration, and contract or contracts covered by the agreements. Advance agreements will be signed by both the contractor and the contracting officer, and made a part of the contract file. Copies of executed advance agreements will be distributed to the cognizant audit office when applicable.

(d) All advance agreements will be incorporated in full in the subsequent contract(s) to which they pertain, prior to award.

Subpart 2831.2—Contracts With Commercial Organizations

2831.205 Selected costs.

2831.205-3270 Precontract costs.

(a) Precontract cost authorizations shall be used only on cost reimbursement contracts, contain no provisions for payment of fees, and be treated as advance agreements in accordance with the provisions of FAR 31.109 and 2831.109-70 of this chapter.

(b) The following limitations apply to the execution of precontract cost authorizations.

(1) Contracts which are estimated to be $100,000 or less may contain a precontract cost authorization providing the authorization is for a period of 30 days or less and the dollar amount does not exceed one third of the total estimated costs (including fee if any) of the contract.

(2) Contracts which are estimated to be greater than $100,000 may contain a precontract cost authorization providing the authorization is for a period of 60 days or less and the dollar amount does not exceed the lesser of $100,000 or one third of the total estimated costs (including fee if any) of the contract.

(3) The limitations expressed under paragraphs (b) (1) and (2) of this section may be increased in unusual circumstances as appropriate, with the written approval of the head of the contracting authority, but in no event shall they exceed one-third of the total estimated costs (including fee if any) of the contract or be for periods of time which exceed 90 days.

PART 2832—CONTRACT FINANCING

Sec.
2832.000 Scope of part.

Subpart 2832.4—Advance Payments

2832.400 Scope of subpart.
2832.402-70 General.
2832.407-70 Interest.

Subpart 2832.70—Prompt Payment

2832.7000 Scope of subpart.
2832.7001 Policy.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4464, Jan. 30, 1985, unless otherwise noted.

2832.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters.

Subpart 2832.4—Advance Payments

2832.400 Scope of subpart.

This subpart provides policies and procedures for advance payments on prime contracts and subcontracts.

2832.402-70 General.

(a) The authority to sign written determinations and findings with respect to making advance payments is vested in those individuals listed in 2801.601(a) for their respective bureaus.

(b) Prior to awarding a contract which contains provisions for making advanced payments, the contract terms and conditions concerning advance payments must be approved at a level above the Contracting Officer, with the advice and consent of the bureau's legal counsel.

(c) The Contracting Officer shall coordinate with the activity that is to provide contract financing for advance payments, the bureau's disbursing or finance office, or the Treasury Department, as appropriate, to ensure that all FAR and departmental requirements are met.

2832.407-70 Interest.

In cases where advance payments may be made on an interest free basis (FAR 32.407(d)), the intent to make such interest free advance payments, and the circumstance permitting interest free advance payments, shall be set forth in the original determination and findings and be approved in accordance with 2832.402-70(a).

Subpart 2832.70—Prompt Payment

2832.7000 Scope of subpart.

This subpart provides policies and procedures for implementing FAR 32.9—Prompt Payment.

[53 FR 12421, Apr. 14, 1988]

2832.7001 Policy.

The head of each contracting activity is responsible for promulgating procedures to ensure that, when specifying due dates, full consideration will be given to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract.

[53 FR 12421, Apr. 14, 1988]

PART 2833—DISPUTES AND APPEALS

Sec.

2833.000 Scope of part.
2833.009-70 Suspected fraudulent claims.
2833.011-70 Contracting officer's decision.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4465, Jan. 30, 1985, unless otherwise noted.

2833.000 Scope of part.

This part prescribes policies and procedures for processing contract disputes and appeals.

2833.009-70 Suspected fraudulent claims.

Contracting officers shall report suspected fraudulent claims to the Director, Commercial Litigation Branch, Civil Division, Room 1138, TODD Building, Washington, DC, (Ref. 28 CFR 0.45(d)).

2833.011-70 Contracting officer's decision.

(a) The Agency Board of Contract Appeals (BCA) which will hear appeals from the decisions of DOJ and bureau contracting officers is the Department of Transportation BCA. The procedures set forth in 41 CFR 12-60 Contract Appeals Board shall apply.

(b) Pursuant to 28 CFR 0.45 the contact for all appeals of decisions of DOJ contracting officers which will be forwarded to the BCA under paragraph (a) of this section, should be sent to the Director, Commercial Litigation Branch, Civil Division, Room 740, TODD Building, Washington, DC 20530.

PART 2834—MAJOR SYSTEM ACQUISITION

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

2834.002-70 Policy.

In accordance with Pub. L. 98-577, the Small Business and Federal Procurement Competition Enhancement Act of 1984, an executive agency may establish dollar thresholds for the designation of a major system. Accordingly, dollar thresholds for a major system under Office of Management and Budget Circular A-109 are designated below.

(a) *Major Automated Information System.* Within the Department of Justice, a major automated information system is one whose life cycle cost is in excess of $40 million.

(b) *Major Real Property System.* (1) By purchase, when the assessed value of the property exceeds $60 million.

(2) By lease, when the annual rental charges, including basic services (e.g.,

cleaning, guards, maintenance), exceed $1.5 million.

(3) By transfer from another agency at no cost when the assessed value of the property exceeds $12 million.

(c) *Construction Projects.* Construction projects for which the total estimated costs (including architectural and engineering design fees, and project administration and management fees) through implementation of the project exceed $60 million.

(d) *Research and Development (R&D) System.* Any R&D activity expected to exceed $0.5 million for the R&D phase is subject to OMB Circular A-109, unless exempted by the head of the contracting activity.

(e) *Any Other System or Activity.* The head of the contracting activity responsible for the system may designate any system or activity as a Major System under OMB Circular A-109 as a result of Departmental review, e.g., selected systems designed to support more than one principal organizational unit.

(f) *Exemption.* The Assistant Attorney General for Administration, upon recommendation by the head of the contracting activity responsible for the system, may determine that, because of the routine nature of the acquisition, the system (e.g., an information system utilizing only off-the-shelf hardware or software) will be exempt from the OMB Circular A-109 process, although by virtue of its life cycle costs, it would otherwise be identified as "major" in response to OMB Circular A-11.

[50 FR 29809, July 22, 1985, as amended at 52 FR 34390, Sept. 11, 1987]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2835.000 Scope of part.
2835.001-70 Definitions.
2835.003-70 Policy and procedures.
2835.005-70 Work statement.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4465, Jan. 30, 1985, unless otherwise noted.

2835.000 Scope of part.

This part prescribes policies and procedures with respect to the special application of research and development (R&D) contracting.

2835.001-70 Definitions.

(a) *Research* is a systematic, intensive, scientific study including experimentation directed toward increasing knowledge and understanding of those fields of the sciences related to the solution of mission related problems.

(b) *Development* as used in the JAR, is the systematic use of the knowledge and understanding derived from research efforts directed toward the solution of specific problems or the formulation of specific projects or processes, and the subsequent production of useful materials, devices, systems, methods, or prototypes.

(c) *Research and development activities* are those activities which include: Strategic planning and analysis leading to the performance of research or development; research or development leading to the creation of prototype equipment or processes; as well as operational testing; experimentation; field implementation; and evaluation of such equipment or processes. The following are illustrative of research and development activities: Theoretical analyses; exploratory studies and experiments in any field of science and technology; developmental efforts requiring the practical application of investigative findings and theories of a scientific or technical nature; the use of such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto and drawings or designs thereof as well as services, tests, and reports necessary for, or incidental to the performance of experimental, developmental or research work. The term *research and development activities*, as used in this part, ordinarily encompasses those activities listed above. However, in an exceptional case, depending upon the particular facts, some kinds of efforts not set forth above could be categorized as *research and development activities* within this part. These activities do not ordinarily include: Routine product testing; quality control; mapping; collection of general purpose statistics; experimental production; routine evaluation of an experimental program or an operational program; activities concerned primarily with the dissemination of scientific information or the training of scientific and technical personnel. However, in an exceptional case, depending upon the particular facts and circumstances, some kinds of efforts excluded in the preceding sentence could be research and development activities within this supplemental regulation.

§ 2835.003-70 Policy and procedures.

Requiring activities and contracting offices shall adhere to the policies and procedures in this Section in acquiring R&D services.

(a) Acquisition approvals. All requirements for R&D activities of more than $25,000 shall be submitted to the Assistant Attorney General for Administration (AAG/A) for approval prior to solicitation and award by the contracting office. Requirements for R&D will be submitted for approval via the Systems Policy Staff, OIT, and the Office of the Procurement Executive, who will review the submission and recommend to the AAG/A the appropriate action. The proposed R&D project shall be reviewed for the following elements.

(1) The requirement is not duplicative of any R&D activity previously conducted or in progress.

(2) The statement of work clearly and adequately describes the objectives of the R&D project.

(b) Contracting for R&D requirements. Approval of the requirement by the AAG/A does not constitute approval of the method of procurement or contract type. Such decisions will be made by the contracting officer in accordance with applicable regulations.

(c) R&D requirements of $25,000 or less shall be approved by the heads of the contracting activity as defined in 2802.102(c) following review by the Systems Policy Staff and Office of the Procurement Executive.

[51 FR 759, Jan. 8, 1986]

2835.005-70 Work statement.

(a) The preparation of a clear, concise, and complete statement of work is essential to sound contracting for R&D activities. Work statements must be individually tailored by technical and contracting personnel to attain the desired degree of flexibility for contractor creativity, both in submitting proposals and in contract performance. Distinction must be made between level of effort (term) work statements which generally require the furnishing of technical effort and a report on the results thereof, and task (completion) work statements which generally require development of tangible end items designed to meet specific functional requirements.

(b) In preparing statements of work for R&D activities the following elements shall be considered:

(1) A general description of the required objectives and the desired results;

(2) All background information helpful to a clear understanding of the requirements and how they evolved;

(3) Technical considerations which affect the requirements such as known specific phenomena or techniques;

(4) A detailed description of the technical requirements and subordinate or associated tasks;

(5) A description of the reporting requirements and any other deliverable items such as data, experimental hardware, prototypes, etc.; and,

(6) Other special considerations.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2845—GOVERNMENT PROPERTY

2845.000 Scope of part.

Subpart 2845.1—General

2845.102 Policy.
2845.105 Records of Government property.

Subpart 2845.5—Management of Government Property in the Possession of Contractors

2845.505-14 Reports of Government property.

Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2845.603 Disposal methods.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

SOURCE: 53 FR 49666, Dec. 9, 1988, unless otherwise noted.

2845.000 Scope of part.

This part prescribes policies and procedures for providing Department of Justice property to contractors; contractors' use, and management of Departmental property; and reporting, redistribution and disposal of contractor property.

Subpart 2845.1—General

2845.102 Policy.

Subject to the provisions in part 45 of the Federal Acquisition Regulations:

(a) The contracting officer is responsible for the delivery of Government property to contractors and serves as property administrator unless property administration responsibilities are explicitly delegated in the contract. Property management responsibilities may be delegated to contracting officer's technical representatives or other representatives authorized to act in the contracting officer's behalf with respect to Government-furnished property.

(b) The contracting officer shall ensure that contractor property responsibilities are clearly delineated and that, consistent with internal bureau policies and procedures, requirements are coordinated with the bureau property managers before award and throughout the course of a contract in which property is furnished.

2845.105 Records of Government property.

If departmental elements maintain the Government's official property management records, the contract records may be kept as a separate account in the bureau's internal property management system, in which case the contracting officer or formally designated property administrator shall serve as custodian of the account.

Subpart 2845.5—Management of Government Property in the Possession of Contractors

2845.505-14 Reports of Government property.

(a) In compliance with FAR 45.505-14, by January 31 of each year, DOJ contractors shall furnish the cognizant contracting officer an annual report of the Department of Justice property for which they are accountable as of the end of the calendar year.

(b) By March 1 of each year, bureaus shall submit a summary report of Departmental property furnished under each contract, as of the end of the calendar year, to the Facilities and Administrative Services Staff, Justice Management Division. The report shall be categorized in accordance with FAR subpart 45.505 and shall include contracts for which the bureau maintains the official government records.

Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2845.603 Disposal methods.

Policies pertaining to reutilization and disposal of Department of Justice property, including requirements for internal screening, waivers, and disposal reporting, are prescribed in the Justice Property Management Regulations subpart 128–43. Unless otherwise specified, the "plant clearance officer" shall be a designated utilization and disposal representative of a bureau's property management office.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
2852.000 Scope of part.

Subpart 2852.0—Instructions for Using Provisions and Clauses

2852.100 Scope of subpart.
2852.101 Using part 2852.
2852.102 Incorporating provisions and clauses.
2852.102-70 Incorporation in full text.
2852.104-70 Procedures for modifying and completing JAR provisions and clauses.
2852.105-70 Procedures for using alternates.

Subpart 2852.2—Texts and Provisions of Clauses

2852.200 Scope of subpart.
2852.201-70 Contracting Officer's Technical Representative (COTR).
2852.210-70 Brand name or equal.
2852.232-79 Inspection and acceptance.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4466, Jan. 30, 1985, unless otherwise noted.

2852.000 Scope of part.

This part: gives instructions for using provisions and clauses in solicitations and/or contracts; and, sets forth the solicitation provisions and contract clauses prescribed by this regulation.

Subpart 2852.1—Instructions for Using Provisions and Clauses

2852.100 Scope of subpart.

This subpart: gives instructions for using part 2852, including the explanation of provisions and clauses; and, prescribes procedures for modifying provisions and clauses in solicitations and contracts and for using alternatives.

2852.101 Using Part 2852.

(a) Definitions:

Alternate means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It (1) adds wording to, (2) deletes wording from, or (3) substitutes specified wording for a portion of the basic provision or clause. The alternate portion of the basic provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution.

Contract clause or *clause* means a term or condition used in contracts or both solicitations and contracts which applies after contract award or both before and after award.

Modification, as used in this subpart, means a minor change in the details of a provision or clause that is specifically authorized by the JAR and does not alter the substance of the provision or clause.

Solicitation provisions or *provision* means a term or condition used only in solicitations and applying only before contract award.

Substantially as follows or *substantially the same as*, when used in the prescription or preface of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate equipment peculiar to an individual acquisition; provided that the variations include the salient features of the JAR provision or clause and are not inconsistent with the intent, principle, and substance of the JAR provision or clause or related coverage of the subject matter.

(b) The numbering system used for JAR clauses follows to the extent possible, the numbering system used in FAR part 52.

2852.102 Incorporating provisions and clauses.

2852.102-70 Incorporation in full text.

JAR provisions or clauses shall be incorporated in solicitations and contracts in full text.

2852.104-70 Procedures for modifying and completing JAR provisions and clauses.

(a) JAR provisions and clauses shall not be modified unless the JAR authorizes their modification. Any such authorizations are contained in the provision or clause preface.

(b) When modifying JAR provisions or clauses incorporated by reference, insert the changed wording directly by substituting the changed wording as permitted.

(c) When completing blanks in JAR provisions or clauses incorporated in full text, insert the fill-in information in the blanks of the provision or clause.

2852.105-70 Procedures for using alternates.

(a) A major variation in a JAR provision or clause is accommodated by the use of an alternate. All alternates to a given provision or clause as well as instructions for their use appear after the basic provision or clause.

(b) Bureaus wishing to use an alternate for a JAR required provision or clause must submit the proposed alternate to the Procurement Executive for review and approval prior to using the proposed alternate.

[50 FR 4466, Jan. 30, 1985, as amended at 53 FR 49666, Dec. 9, 1988]

Subpart 2852.2—Texts and Provisions of Clauses

2852.200 Scope of subpart.

This subpart sets forth the texts of all JAR provisions and clauses.

2852.201-70 Contracting Officer's Technical Representative (COTR).

The following clause is recommended for use in solicitations and contracts to delineate COTR responsibility and authority is accordance with 2801.70.

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE

(a) Mr./Ms. (Name) of (Organization) (Room No.), (Building), (Address), (Area Code & Telephone No.), is hereby designated to act as Contracting Officer's Technical Representative (COTR) under this contract.

(b) The COTR is responsible for: receiving all deliverables; inspecting and accepting the supplies or services provided hereunder in accordance with the terms and conditions of this contract; providing direction to the contractor which clarifies the contract effort, fills in details or otherwise serves to accomplish the contractual Scope of Work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment prior to forwarding the original invoice to the payment office and a conformed copy to the Contracting Officer.

(c) The COTR does not have the authority to alter the contractor's obligations under the contract, direct changes that fall within the purview of the General Provisions clause entitled "Changes," and/or modify any of the expressed terms, conditions, specification, or cost of the agreement. If as a result of technical discussions it is desirable to alter/change contractual obligations or the Scope of Work, the Contracting Officer shall issue such changes in writing and signed.

(End of clause)

2852.210-70 Brand name or equal.

This clause shall be used in accordance with 2810.004-70. (As used in this clause, the term "brand name" includes identification of products by make and model.) When this clause is used, the salient features of the "brand name" item must be set forth in the solicitation in order to permit offerors of "equal products" to bid.

BRAND NAME OR EQUAL

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics and requirements listed in the invitation.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the invitation for bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid as well as other information reasonably availalbe to the purchasing activity. Caution to Bidders: The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to; (i) determine whether the product offered meets the salient characteristics requirement of the invitation for bids, and (ii) establish exactly what the bidder proposed to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall: (i) include in his bid a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after the bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of clause)

2852.232-79 Inspection and acceptance.

The following clause is recommended for use in solicitations and contracts to establish definitive dates for inspection and acceptance.

INSPECTION AND ACCEPTANCE

(a) Inspection and acceptance of the supplies or services to be furnished hereunder shall be performed at *—— by the COTR or his designated representative, in accordance with the Inspection clause and any other provisions specified in this contract. The Government reserves the right to conduct any tests it deems reasonably necessary to ensure that the supplies or services provided conform in all respects to the contract specifications. Supplies or services which upon inspection are found not to be in conformance with contractual specifications shall be promptly rejected and notice of such rejection, together with appropriate instructions, will be provided the contractor by the Contracting Officer.

(b) The Government will use its best efforts to inspect and accept/reject the supplies or services provided within **—— days. Failure of the Government to so inspect the supplies or services within the above stated time shall not be construed as acceptance of such supplies or services.

(End of Clause)

(Oct. 1988)

* Contracting officer to insert the appropriate place of inspection:

** Contracting officer to insert the appropriate number of days required for inspection and acceptance.

(End of clause)

[50 FR 4466, Jan. 30, 1985, as amended at 53 FR 49666, Dec. 9, 1988]

CHAPTER 29—DEPARTMENT OF LABOR

(Parts 2900 to 2999)

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SUBCHAPTER A—GENERAL

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8914, Mar. 5, 1985, unless otherwise noted.

Subpart 2901.1—Regulation System

2901.100 Scope of subpart.

This subpart sets forth introductory information pertaining to the Department of Labor Acquisition Regulation, referred to as the DOLAR. This subpart explains the relationship of the DOLAR to the Federal Acquisition Regulation (FAR) and explains the DOLAR's purpose, authority, applicability, exclusions, and issuance.

2901.101 Purpose.

(a) This subpart establishes chapter 29, the Department of Labor Acquisition Regulation, within title 48, the Federal Acquisition Regulations System, of the Code of Federal Regulations.

(b) The purpose of the DOLAR is to implement the FAR, where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DOLAR is not by itself a complete document as it must be used in conjunction with the FAR.

2901.102 Authority.

The DOLAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of DOL Temporary Regulation Number 44, dated February 18, 1983, in accordance with section 1 of the Act of March 4, 1913 (29 U.S.C. 551, 37 Stat. 736), as amended; 5 U.S.C. 301, and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

2901.103 Applicability.

The FAR and DOLAR apply to all DOL acquisitions of supplies and services which obligate appropriated funds unless otherwise specified in this regulation.

2901.103-70 Exclusions.

Certain DOL policies and procedures which might otherwise come within the scope of this regulation may be excluded from the DOLAR where there is appropriate justification, such as:

(a) Subject matter that is procedural in nature and internal to the operation of the Department. These matters are contained in the Department of Labor Manual Series (DLMS).

(b) Instructional or training material that more fully explains matters covered in the FAR and DOLAR.

(c) Unless otherwise specifically stated, subject matter which deals with assistance programs where the award instruments are other than acquisition contracts. Administrative requirements governing all grants and agreements by which Department of Labor agencies award funds to State and Federal Governments, Indian and Native American entities, public and private institutions of higher education and hospitals, and other quasi-public and private nonprofit organizations are codified separately at part 29-70 of title 41 of the Code of Federal Regulations.

2901.104 Issuance.

2901.104-1 Publication and code arrangement.

(a) The DOLAR and its subsequent changes are published when issued in daily issues of the FEDERAL REGISTER and in cumulative form in the Code of Federal Regulations.

(b) The DOLAR is issued as chapter 29 of title 48 of the Code of Federal Regulations.

2901.104-2 Arrangement of regulations.

(a) *General.* The DOLAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself, there will be no corresponding DOLAR part, subpart, etc.

(b) *Numbering.* Where DOLAR implements the FAR, the implementing part, subpart, section or subsection of the DOLAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 29 or a 290 such that there will always be four numbers to the left of the first decimal. For example, the DOLAR implementation of FAR 1.104-1 is shown as 2901.104-1 and DOLAR implementation of FAR subpart 24.1 is shown as subpart 2924.1. Material which supplements the FAR will be assigned the numbers 70 and up. For example, DOL regulations governing appointment and termination of appointment of contracting officers' representatives is identified as 2901.603-70.

(c) *References and citations.* (1) This regulation may be referred to as the Department of Labor Acquisition Regulation or the DOLAR.

(2) References to FAR materials within this regulation will include FAR and the identifying number, for example, FAR 1.104-2(c)(2). References to DOLAR materials within the regulation will simply cite the identifying number, for example, 2901.104-2(c)(2).

2901.104-3 Copies.

Copies of the DOLAR published in the FEDERAL REGISTER or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Requests should reference the DOLAR as Chapter 29 of Title 48. The Code of Federal Regulations is printed in paperback edition with updates as needed, and revised as of October 1 of each year. Requests for the CFR version of the DOLAR should reference chapter 29 of title 48.

Subpart 2901.2—Administration

2901.201 Maintenance of the FAR.

2901.201-1 The Civilian Agency Acquisition Council.

(a) The Department of Labor shall be represented on the Civilian Agency Acquisition Council by a staff member of the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, appointed for that purpose by the Director, Directorate of Procurement and Grant Management.

(b) The Office of Procurement and Grant Policy will be responsible for coordination with all interested DOL elements regarding proposed FAR revisions and advocating revisions sought by DOL.

Subpart 2901.3—Agency Acquisition Regulations

2901.301 Policy.

(a) The Department of Labor Acquisition Regulation (DOLAR) System consists of policies, procedures and regulations which implement or supplement the FAR at specific levels within the Department of Labor. The Federal Acquisition Regulation (FAR) and the DOLAR System govern the contracting process and control contracting relationships between contractors and the Departments' agencies and offices.

(b) The DOLAR is issued pursuant to the authority of the Secretary of Labor under 5 U.S.C. 301, 29 U.S.C. 551, 40 U.S.C. 486(c), and other authority specifically stated, and is subject to the overall authority of the Administrator of General Services. See FAR 1.301(c)(3).

2901.302 Limitations.

DOLAR System issuances are limited to:

(a) Published, codified, Department-wide regulations which implement or supplement FAR policies and procedures and which affect organizations or individuals seeking to contract with the Department;

(b) Published, codified, lower-level regulations of agencies and offices which contain additional policies and procedures that supplement the FAR to satisfy the specific and unique needs of the agency or office.

2901.303 Codification and public participation.

(a) Published issuances under the DOLAR are codified under chapter 29 in title 48, Code of Federal Regulations and parallel the FAR in format, arrangement and numbering system.

(b) Regulations codified under chapter 29 are limited to those affecting private or public, profit or not for profit concerns, organizations or individuals desiring to enter into contracts with the Department. Public participation procedures used in the promulgation of codified regulations under the DOLAR System will follow procedures of FAR subpart 1.5.

2901.304 Agency control and compliance procedures.

(a) The DOLAR System is under the direct oversight and control of the Director, Directorate of Procurement and Grant Management. Procedures for review and approval of issuances under the DOLAR System comply with FAR subparts 1.3 and 1.4. These procedures are contained in 2901.6.

(b) DOLAR System issuances shall comply with the restrictions in FAR 1.304(b) and the limitations in 2901.302. DOL Agencies and offices may implement or supplement the FAR or DOLAR with internal instructions not applicable DOL-wide. Additionally, they may request publication in the DOLAR of procurement instructions and other procurement material considered of interest to the general public. Such instructions shall not duplicate higher-level coverage and shall be numbered in accordance with FAR 1.104-2 except that the numbers prescribed there and in 2901.104-2 shall be suffixed by the alphabetic abbreviation or other symbol of the respective Agency issuing the instructions. Each DOL Agency and office shall establish, at the headquarters level, review and approval procedures for maintaining oversight and control of all DOLAR System issuances for their respective Agency or office. These procedures shall include methods to prevent unnecessary duplication of higher-level coverage; ensure consistency and uniformity among issuances; control the number of directives issued; update directives; and distribute copies.

(c) DOL Agencies and offices shall submit all proposed instructions and materials that implement or supplement the DOLAR to the Director, Directorate of Procurement and Grant Management, for review in conjunction with the Solicitor prior to their publication. All issuances, whether or not published as a part of the DOLAR

System, shall be submitted for review. In the case of internal procurement instructions, the purpose of the review is to ascertain that such instructions are consistent with the FAR and the DOLAR and that they do not contain information which should be issued as the DOLAR.

Subpart 2901.4—Deviations From the FAR and DOLAR

2901.403 Individual deviations.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve deviations from FAR provisions (see FAR 1.403) or DOLAR provisions which affect only one contracting action.

(b) Requests for deviations under paragraph (a) above shall be submitted by the head of the contracting activity and include justification as to why the deviation is required.

(c) A copy of the approved deviation shall be included in the contract file.

2901.404 Class deviations.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve class deviations of FAR or DOLAR provisions which affect more than one contracting action.

(b) Requests for deviations under paragraph (a) of this section, shall be submitted by the head of the contracting activity and include justification as to why the deviation is required and the number of contracting actions which will be affected.

(c) A copy of each approved class deviation shall be referenced in the contract file.

(d) Recommended revisions to the FAR and a copy of each approved class FAR deviation shall be transmitted to the FAR Secretariat by the Director, Directorate of Procurement and Grant Management, as required in FAR 1.404.

2901.405 Deviations pertaining to treaties and executive agreements.

(a) The Director, Directorate of Procurement and Grant Management, is responsible for transmitting to the FAR Secretariat the information required in FAR 1.405 (d) and (e).

Subpart 2901.6—Contracting Authority and Responsibilities

2901.601 General.

This subpart deals with contracting authority and responsibilities of the head of the agency as defined in 2901.1 and 2902.1, FAR subpart 1.6 and this subpart.

2901.602 Contracting officers.

2901.602-1 Authority.

Information on the limits of contracting officers' authority shall be maintained by the head of each contracting activity as required in FAR 1.601-1. The Directorate of Procurement and Grant Management shall also maintain this information.

2901.603 Selection, appointment, and termination of appointment.

2901.603-1 General.

(a) *First tier delegation.* The Assistant Secretary for Administration and Management (ASAM), acting through the Procurement Executive, is the chief departmental official for all acquisition and grant matters as outlined in Secretary's Order 4-76, for:

(1) Prescribing policies, procedures, and standards regarding the solicitation, award, and administration of all DOL acquisitions and grants for financial assistance (*e.g.,* cooperative agreements, grants, and similar instruments) obligating Federal funds for the purpose of:

(i) Obtaining property and services for the DOL and/or third parties.

(ii) Promoting DOL programs and objectives through financial assistance.

(2) Acquiring property and services for the United States Government under Title I of the Federal Property and Administrative Services Act of 1949 (63 Stat. 379).

(3) Establishing reporting requirements necessary for effective departmental acquisitions and grant management and for complying with data needs promulgated by the Office of Management and Budget (OMB), the General Services Administration (GSA), the General Accounting Office

(GAO), and other agencies. This includes the SF-1099 report, "Income Other Than Wages," and "Federal Procurement Data System" (FPDS) and "Federal Assistance Award Data System" (FAADS) input.

(b) In the Department of Labor, contracting officer and grant officer authority and responsibility have been delegated from the Secretary of Labor through the Assistant Secretary for Administration and Management (ASAM) to the following officials or officers acting in their behalf:

(1) The Assistant Secretary for Employment and Training.

(2) The Assistant Secretary for Occupational Safety and Health.

(3) The Deputy Under Secretary for Employment Standards.

(4) The Assistant Secretary for Mine Safety and Health.

(5) The Deputy Under Secretary for International Affairs.

(6) The Commissioner of Labor Statistics.

(7) The Inspector General.

(8) The Regional Administrators—OASAM.

(9) The Director, National Capital Service Center, OASAM.

(c) *Delegations and limitations.* Subject to the limitations set forth in this paragraph and paragraph (g), the officials designated in paragraph (b) possess full authority to obligate the U.S. Government through the use of contracts, agreements, orders, grants, and/or other similar instruments. This authority includes obligating Federal funds for the purpose of obtaining property and services for the government and/or third parties, or for the purpose of promoting DOL programs or objectives through financial assistance. Each official designated in paragraph (b) (except the Inspector General), is delegated authority and responsibility for issuing purchase orders for purchases under GSA Federal Supply Schedules, FEDSTRIP, and from open-market sources not to exceed the small purchases limitation. Acquisition of typewriters, office copiers, adding machines, and calculators must be written against blanket purchase orders maintained for such equipment by the National Capital Service Center, OASAM. Acquisitions of copier equipment require prior approval of the Directorate of Administrative Services and Safety and Health Programs. Paragraph (g)(2) outlines limitations on the purchase, lease and renewal of lease(s) of ADP equipment, software and services. Approval authority for competitive acquisition of consulting and related services costing less than $50,000 cannot be redelegated by the head of the contracting activity. Other delegations in this section may be further redelegated by the designated officials within their areas of assigned responsibility, except that small purchase authority delegated to the Assistant Secretary for Employment and Training, the Assistant Secretary for Occupational Safety and Health, the Deputy Under Secretary for Employment Standards, and the Commissioner of Labor Statistics is limited to the National Office only and may not be redelegated to the Regional Offices. Before issuing redelegations, contracting officers should consider the following factors to determine the extent to which authority shall be redelegated:

Volume of contracting programs; presence of, or capability of obtaining adequately trained personnel; consolidation of smaller contracting programs and offices on a geographical basis; and the overall strengthening of the acquisition process by the selection of qualified personnel. Criteria for selection, appointment and termination of Contracting/Grant Officers are contained in the Department of Labor Manual Series (DLMS-2) Chapter 800. Copies of the DLMS Chapter may be obtained upon written request from the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. An information copy of every further redelegation must be furnished to the OASAM, Directorate of Procurement and Grant Management.

(d) *Responsibilities.* The following redelegations are made subject to the requirements and exceptions outlined in paragraph (g) regarding prior approval requirements and the limitations on authority to issue purchase orders and contracts for the purchase, lease and renewal of lease(s) for ADP equipment, software and services; and acquisition of consulting and related services.

(1) The Assistant Secretary for Employment and Training, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Obtaining all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Employment and Training.

(ii) Approval of all grantee acquisitions of ADP equipment, software and services using grants-in-aid to State and local governments.

(iii) Establishing and maintaining an imprest fund.

(2) The Assistant Secretary for Occupational Safety and Health, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Issuance of grant agreements with States as required under the statutory and regulatory requirements imposed on the Assistant Secretary for Occupational Safety and Health.

(ii) Reimbursements to States, pursuant to section 7(c)(1) of the Occupational Safety and Health Act of 1970 (OSH Act of 1970) (29 U.S.C. 656(c)(1)) for State services, facilities, and personnel used to carry out the statutory and regulatory responsibilities imposed on the Assistant Secretary for Occupational Safety and Health.

(iii) Issuance of grants, pursuant to section 21(b) of the OSH Act of 1970 (29 U.S.C. 670(b)) for short term training of personnel.

(iv) Issuance of grants to nonprofit organizations for implementation of the expanded Employer-Employee Training Program under section 21(c) of the OSH Act of 1970 (29 U.S.C. 670(c)).

(3) The Deputy Under Secretary for Employment Standards, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Entering into agreements with States to enhance Federal/State cooperative efforts for the administration of comparable employment standards programs.

(ii) Procuring medical services necessary for the adjudication of claims for injury and occupational disease filed by Federal employees in accordance with the Federal Employees Compensation Act (5 U.S.C. 8101, *et seq.*) and the Federal Coal Mine Health and Safety Act of 1969, as amended (Pub. L. 91-173, 83 Stat. 742).

(4) The Assistant Secretary for Mine Safety and Health, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Mine Safety and Health.

(ii) Issuing grants as required by the Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*).

(iii) The purchase, lease, or renewal of lease(s) of ADP equipment, software and services costing $100,000 or less without prior approval of the Directorate of Information Resources Management (DIRM), OASAM. Requirements shall not be fragmented in order to circumvent this $100,000 threshold. ADP equipment, software or services costing more than $100,000 require prior approval of DIRM. Prior approval of DIRM for ADP equipment, software, or services costing less than $100,000 is also required when costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201-23.104.

(5) The Deputy Under Secretary for International Affairs, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of supplies and services required in support of training and orientation of foreign nationals.

(ii) Acquisition of supplies and services required in support of overseas exhibitions required under statutory and regulatory responsibilities imposed on the Deputy Under Secretary for International Affairs.

(iii) International responsibilities not funded by an annual appropriation.

(6) The Commissioner of Labor Statistics, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of supporting statistical economic research services, required under the statutory and regulatory responsibilities imposed on the Commissioner of Labor Statistics.

(ii) Selling special statistics developed by the Bureau of Labor Statistics in accordance with the Act of April 13, 1934 (29 U.S.C. 9 *et seq.*).

(7) The Inspector General, or an officer acting in that capacity, is delegated authority and responsibility for contracting with State and local agencies for audit services in accordance with section 4 of the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 503).

(8) The Regional Administrators—OASAM, or officers acting in that capacity, are delegated authority and responsibility within their respective regions, for:

(i) The acquisition of property and services required for the Regional Offices, including all imprest fund purchases, GSA Federal Supply Schedule purchases, and open-market purchases. The acquisition of records equipment when the cost does not exceed the small purchases limitation for a single system. Purchases for typewriters, office copiers, adding machines, and calculators must be written against blanket purchase orders maintained for such equipment by the National Capital Service Center, OASAM. The purchase of copier equipment requires prior approval of the Directorate of Administrative Services and Safety and Health Programs.

(ii) Contracting for ADP operational services to support regional remote job entry capabilities. This authority does not include the purchase, lease, or renewal of lease(s) for ADP equipment or software. Prior approval of ADP operational services is required from DIT whenever a Delegation of Procurement Authority (DPA) or sharing clearance is required from the General Services Administration (GSA).

(9) The Director, National Capital Service Center, OASAM, or an officer acting in that capacity, is delegated authority and responsibility for acquisition of all property and services on behalf of DOL activities except for those contracting and grant responsibilities designated above. This includes (except for the Mine Safety and Health Administration (MSHA)) acquisition authority for the purchase, lease, and renewal of lease(s) of all ADP equipment, software and all ADP services where Agencies have obtained prior approval from the Directorate of Information Resources Management (DIRM), OASAM, as appropriate.

(e) *Compliance responsibilities.* Each official designated in paragraph (b) is responsible for:

(1) Complying with the policies, procedures and reporting requirements established by the ASAM.

(2) Complying with the policies, procedures and other requirements prescribed by OMB, GSA, and other central agencies, and such implementing instructions as the Department may issue. This specifically includes competition for services and products within the small purchases limitation and restrictions on the use of consultant contracts, audiovisual productions, etc.

(3) Within the limitations specified in this subpart, obtaining all property and services required to fulfill the statutory and regulatory responsibilities of the Agency or Office.

(f) *Policy responsibilities.* The following officials have acquisition policy responsibilities within the DOL:

(1) The Director, Directorate of Procurement and Grant Management, OASAM, or an officer acting in that capacity, is responsible for:

(i) Developing and publishing guidelines, policies, and regulations for DOL acquisition and grant operations.

(ii) Reviewing and evaluating administrative procedures for DOL acquisition and grant operations.

(iii) Providing technical advice and assistance to those DOL officials and officers with acquisition and grant responsibilities. This includes interpreting the Federal Acquisition Regulations and the Department of Labor Acquisition Regulations and obtaining legal advice and assistance from the Solicitor of Labor as required.

(iv) Providing continuous coordination with appropriate DOL and Federal Agencies to ensure compliance with procurement and grant regulations.

(v) Providing technical advice and support to the ASAM in complying with the reporting requirements outlined in paragraph (a)(3).

(2) The Director, Directorate of Information Resources Management (DIRM), OASAM, or an officer acting in that capacity, is responsible for:

(i) Reviewing and providing prior approval for the purchase, lease or renewal of lease(s) of ADP equipment, software and services costing $100,000 or more (the purchase price is to be used to determine inclusion in this paragraph regardless of whether the item is to be purchased or leased) and for all ADP services. Requirements shall not be fragmented in order to circumvent this $100,000 threshold. Reviews involving lower amounts will be made when costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201-23.104.

(ii) Providing oversight, including periodic system reviews, to promote efficient and effective management of information technology resources.

(iii) Reviewing ADP procurement requests for compliance with procurement policies, standards, and regulations.

(iv) Representing DOL and agencies in DOL in liaison with GSA and OMB on ADP matters.

(v) Developing and publishing policies and guidelines for managing information technology resources.

(3) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for:

(i) Assuring participation of the Department in the Federal Small and Disadvantaged Business Program as specified in section 8(a) (small disadvantaged business set-asides) and section 15 (procurement in labor surplus areas) of the Small Business Act, as amended (15 U.S.C. 637(a) and 644), and Executive Orders 11625 (Minority Business Enterprises) and 12138 (Women-Owned Business Enterprises).

(ii) Assuring participation and input of each Program Agency in establishing DOL goals for increased opportunities for small and disadvantaged business concerns to participate in the Department's procurement and grant activities.

(iii) Providing technical advice and assistance to Program Agencies in establishing Agency goals for utilizing small and disadvantaged businesses.

(iv) Developing systematic procedures, guidelines and regulations for assuring the effective implementation of the provisions of the Small Business Act, as amended, and Executive Orders 11625 and 12138.

(v) Maintaining liaison with the Small Business Administration (SBA) on matters regarding sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637(a) and 644), and Executive Order 12138, and the Department of Commerce on matters relating to Executive Order 11625.

(4) The Director, Office of Information and Public Affairs (OIPA), is responsible for:

(i) Reviewing all purchase orders, requisitions and contracts for audiovisual productions including those which contain an audiovisual component along with other activities before the request is processed and approved by OASAM or another Agency to assure compliance with DOL and OMB requirements. All types of audiovisual productions are covered, including projects for training, education, internal communications, and/or public information purchases. Training and education products will not be reviewed for content but rather for the professional quality, effectiveness and cost of the communications material being produced. (See Guidelines for Management of Departmental Audiovisual Activities, issued pursuant to OMB Circular A-114 and Secretary's Order 5-79.)

(ii) Reviewing all purchase orders, requisitions, and contracts for the rental or purchase of major audiovisual equipment to be used in production work before the request is processed and approved by OASAM or another DOL Agency to assure compliance with DOL and OMB requirements. Production equipment includes motion picture and videotape cameras, editing equipment and duplication equipment for videotape and film. Review is not necessary for such equipment as still cameras, projectors and tape players, cassette tape players, *etc.*

(5) The Procurement Review Board is responsible for:

(i) Reviewing all requests to award contracts, grants, agreements, or modifications thereto (as described in this paragraph (f)(5)) and recommending approval or disapproval to the ASAM:

(A) Requests for noncompetitive procurements, discretionary grants and agreements exceeding the small purchases limitation;

(B) Noncompetitive consulting and related services requests, including purchase orders, and personnel appointments of consultants and experts;

(C) Competitive procurements for consulting and related services costing $50,000 or more and modifications thereto as described in paragraph (g) of this section;

(D) Major procurements and those with high waste vulnerability; and

(E) Requests for noncompetitive research, evaluation and demonstration projects after prior review by the Assistant Secretary for Policy.

(ii) Assuring compliance with the scope of the Board's authority, with OMB and DOL guidelines for use of consulting and related services and other special acquisitions.

(iii) Approval by the ASAM of requests identified in this paragraph (f)(5) do not constitute award of a contract. The contracting officer has final approval authority.

(g) *Exceptions to delegations of authority.* The assignment of procurement responsibilities described in paragraph (b) are subject to the exclusions listed below:

(1) *Procurement of consulting and related services.* (i) The ASAM retains authority and responsibility for approval of requests for consulting and related services for individuals and organizations under the following circumstances:

(A) When acquisitions by either contract or purchase order are to be awarded without competition, regardless of amount, or for those competitive actions costing $50,000 or more; and

(B) When modifications involving changes in dollar amounts, deliverables under contracts or (under rare circumstances) extensions to existing consulting and related services contracts are required.

(ii) The heads of the contracting activities retain approval authority for the acquisition of consulting and related services costing less than $50,000 which are obtained through competitive procedures.

(2) *Automated data processing (ADP).* The following requirements and limitations exist for the purchase or lease of ADP equipment, software and services:

(i) Authority to issue purchase orders and contracts is limited only to those officials in paragraph (b) with procurement responsibility explicitly including this authority.

(ii) Acquisition of ADP equipment, software and services costing $100,000 or more requires prior approval of DIRM, OASAM.

(iii) Acquisition of ADP equipment, software and services costing less than $100,000 do not require prior approval of DIRM, OASAM, unless costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201-23.104. However, agencies are responsible for complying with FIRMR documentation requirements.

(3) *Records equipment.* The purchase of records equipment; defined as file cabinets, shelf files, visible files, mechanized files, files guides, folders, jackets, wallets, and similar items used in the creation and maintenance of records and in mail handling requires special authority. Federal Property Management Regulation 101-11.306 as implemented by the Department of Labor Manual Series (DLMS-1) requires that: Form DL 1-194 be completed by the Agency Records Officer and forwarded to the Departmental Records Officer, DIRM, OASAM, for approval prior to acquisition. Regional Administrators—OASAM are delegated this approval authority for their respective regions. In keeping with GSA Bulletins FPMR B-120 and B-122 which discourage the use of legal-size files, no new legal size records equpment is to be purchased.

(4) The OSDBU will periodically monitor DOL Agency acquisition and grant functions which relate to the preferential programs to determine their effectiveness and adherence to Federal and DOL requirements.

(5) The Assistant Inspector General for Audit will periodically audit Agency acquisition and grant functions to determine compliance with governing regulations, policies and procedures.

(h) *Rescission of authority.* The ASAM acting through the Director, Directorate of Procurement and Grant Management, reserves the right to rescind the acquisition and grant authority delegated herein if it is determined that such action is in the best interest of the Government.

[50 FR 8914, Mar. 5, 1985, as amended at 51 FR 40372, Nov. 6, 1986; 53 FR 3839, Feb. 9, 1988]

2901.603-70 Modification of appointment.

To modify a contracting officer's authority, the present appointment shall be revoked and a new certificate issued.

2901.603-71 Ratification of unauthorized contract awards.

(a) The Government is not generally bound by agreements or contractual commitments made to contractors or prospective contractors by persons to whom acquisition authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act of 1949, other Federal laws, the FAR, the DOLAR, and good acquisition practice; *e.g.*, certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met, such as certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, price/cost analysis, administrative approvals, negotiations of appropriate contract clauses, *etc.*

(b) Unauthorized commitments shall not be ratified unless it would have been otherwise proper to enter into a contract prior to the commitment. As used herein, the phrase "otherwise proper" means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirements; *e.g.*, there can be no ratification unless a sole source can be justified; a determination made that the contractor is not debarred or otherwise ineligible for award; the Organizational Conflict of Interest reviews and determinations, if required, are completed; and where all other substantive legal requirements have been met. Whenever it is discovered that any person is performing work as a result of an unauthorized commitment, that person shall be advised that such work is being performed at their own risk pending establishment of valid contractual coverage. The Head of the Contracting Activity (HCA) shall then be notified of the circumstances. If the HCA agrees that the work appears to be without valid authorization, the Director, Directorate of Procurement and Grant Management, shall be notified by the HCA in accordance with the procedures outlined in paragraph (c) of this section.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why the acquisition office was not used, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the Director, Directorate of Procurement and Grant Management, may waive the requirement that the responsible employee initiate and document the request; *Provided* the Head of the Contracting Activity determines in writing that the commitment was in fact made by an employee who shall be identified in the determination.

(2) The request for ratification, an approved justification for noncompeti-

tive acquisition, and the information required by paragraph (c)(1) of this section, must be forwarded to the HCA for concurrence, together with recommended corrective actions to preclude recurrence.

(3) If the HCA concurs with the request for ratification, the request and concurrence shall be forwarded to the Director, Directorate of Procurement and Grant Management, for review by the Procurement Review Board (PRB). The PRB will review the request, the Justification for Non-Competitive Acquisition, any comments or information submitted by the contracting officer which should be considered in evaluation of the request, and the information submitted in accordance with paragraph (c)(2) of this section. Based upon this review and advice from the Office of the Solicitor, the PRB will proceed as follows:

(i) If the request submitted does not appear to be justified, it will be returned to the concurring HCA without approval with an explanation of the decision not to ratify.

(ii) If the request and the recommended corrective actions appear justified and adequate, the PRB may ratify the action, with the concurrence of the Assistant Secretary for Administration and Management, return the file to the contracting officer for action, and monitor the implementation of the corrective action plan. The contracting officer shall direct the disposition of all products and deliverables received by the Government as a result of an unauthorized commitment.

(iii) A detailed record of the review shall be maintained for audit purposes.

2901.603-72 Responsibility of other Government personnel.

(a) Responsibility for the decision of what to buy and when to buy rests with program and certain staff offices and the head of the agency or designee. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.

(b) Personnel responsible for making decisions to buy should maintain a close and continuous relationship with their acquisition activity to ensure that acquisition personnel are made aware of contemplated acquisition actions. This will be mutually beneficial in terms of better planning for acquisition action and more timely, efficient and economical acquisition.

(c) Personnel not delegated contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, program personnel who must use the contracting process to accomplish their programs, must support the contracting officer in ensuring that:

(1) Requirements are clearly defined and specified;

(2) Competitive sources are solicited, evaluated, and selected;

(3) Quality standards are prescribed, and met;

(4) Performance or delivery is timely;

(5) Files are documented to substantiate the judgments, decisions, and actions taken.

2901.603-73 Contracting officer's representatives.

(a) A contracting officer may designate other Government personnel to act as authorized representatives for such functions as technical monitoring, inspection, approval of shop drawings, testing, approval of samples, and other functions of a technical nature not involving a change in the scope, price, terms or conditions of the contract or order. Such designation shall be in writing and shall contain specific instructions as to the extent to which the representative may take action for the contracting officer, but will not contain authority to sign contract documents. The responsibilities and limitations of the contracting officer's representatives may be set forth in the contract or in a separate letter, a copy of which shall be furnished to the contractor.

(b) A person assigned to a contracting office and performing primary duties in a position within a contracting office, and under the supervision of a contracting officer, does not require written designation as a representative of the contracting officer nor designation in a contractual document to perform assigned duties. Such a person is considered to be an employee of the contracting officer, acting in the latter's behalf and, as such, has the authority and responsibility to perform, under the terms and conditions of employment, and to act as assigned by the contracting officer. The contracting officer, however, shall not authorize such as employee, acting as a representative for the contracting officer, to sign any contractual documents or letter in those instances where the signature of a contracting officer is required.

2901.603-74 Legal review and assistance.

Proposed acquisitions may be subject to legal review by the Office of the Solicitor of Labor. Internal DOL procedures are contained in the Department of Labor Manual Series (DLMS-2, Chapter 900, Section 910). Copies of the DLMS Chapter may be obtained upon written request from the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

[51 FR 40373, Nov. 6, 1986 and 53 FR 3839, Feb. 9, 1988]

PART 2902—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2902.1—Definitions

2902.101 Definitions.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular part or portion of a part:

Contracting activity means an agency or office within the Department with delegated procurement authority to manage contracting functions associated with its mission. Within the Office of the Assistant Secretary for Administration and Management, the National Capital Service Center is the contracting activity.

Head of procuring activity means the Assistant Secretary for Administration and Management; the Assistant Secretary for Employment and Training; the Assistant Secretary for Mine Safety and Health, and the Director, National Capital Service Center.

Head of the agency (also called *agency head*) means the Assistant Secretary for Administration and Management.

Head of the contracting activity (*HCA*) means the Assistant Secretary for Administration and Management; the Director, National Capital Service Center, and the head of each DOL Agency and Office listed in 2901.603-1(b) who has overall responsibility for managing the contracting activity.

Procurement Executive means the Director, Directorate of Procurement and Grant Management, and is synonymous with the term *Senior Procurement Executive* defined at FAR subpart 2.1. Responsibilities of the Procurement Executive include appointing the DOL advocate for competition.

Procuring activity means the Office of the Assistant Secretary for Administration and Management; the Employment and Training Administration; the Mine Safety and Health Administration; and the National Capital Service Center.

[50 FR 8921, Mar. 5, 1985, as amended at 51 FR 40373, Nov. 6, 1986; 53 FR 3839, Feb. 9, 1988]

PART 2903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2903.1—Safeguards

Sec.

2903.101 Standards of conduct.
2903.101-3 Agency regulations.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the gratuities clause.
2903.204 Treatment of violations.

Sec.

Subpart 2903.3—Reports of Identical Bids and Suspected Antitrust Violations

2903.302 Reporting identical bids.
2903.302-2 Reporting requirements.

Subpart 2903.4—Contingent Fees

2903.409 Misrepresentation or violation of the Covenant against Contingent Fees.

Subpart 2903.5—Other Improper Business Practices

2903.502 Subcontractor kickbacks.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.602 Exceptions.
2903.603 Responsibilities of the contracting officer.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8921, Mar. 5, 1985, unless otherwise noted.

Subpart 2903.1—Safeguards

2903.101 Standards of conduct.

2903.101-3 Agency regulations.

All DOL personnel engaged in acquisition related activities shall conduct such activities in a manner above reproach in every respect. See part 0 of title 29, CFR. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. See 2903.6 for requirements concerning contracting with current or former DOL employees.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the gratuities clause.

(a) *Action official.* The Director, Directorate of Procurement and Grant Management, is the DOL official authorized to take action pursuant to FAR 3.204(c) against a contractor if it is determined that a violation of the clause at FAR 52.203-3, Gratuities, has occurred. This authority may not be redelegated.

(b) *Referral.* Whenever a suspected violation of the clause at FAR 52.203-3, Gratuities, becomes known to a DOL employee, the matter shall be reported to the cognizant contracting officer. The report shall be in writing and shall clearly state the circumstances surrounding the incident or incidences where it is alleged that the contractor offered or gave a gratuity to a DOL employee and intended by the gratuity to obtain a contract or favorable treatment under a contract. The date(s), location(s), and name(s) of all parties involved in the incident shall be included in the report. The report shall also include a recommended course of action in accordance with FAR 3.204(c) and shall be submitted through the head of the contracting activity to the Director, Directorate of Procurement and Grant Management for disposition.

2903.204 Treatment of violations.

(a) *Notice of contractor.* After review of the report and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Directorate of Procurement and Grant Management shall determine further action to be taken. If requested, the contractor shall be provided with a formal notice which summarizes the events involving the suspected violations and affords the contractor the opportunity to take the action(s) listed under FAR 3.204(b). The notice shall contain a reasonable time limit for reply and shall be sent by certified mail, return receipt requested.

(b) *Action.* Based on the contractor's response to the notice; the results of any further discussions with the contractor, the counsel, or witnesses; the review of additional documentary evidence; and other pertinent information, the Director, Directorate of Procurement and Grant Management, shall make a final and binding decision on the action to be taken in accordance with FAR 3.204(c) and shall provide the contractor with a formal notice of such action.

[50 FR 8921, Mar. 5, 1985, as amended at 51 FR 40373, Nov. 6, 1986; 53 FR 3839, Feb. 9, 1988]

Subpart 2903.3—Reports of Identical Bids and Suspected Antitrust Violations

2903.302 Reporting identical bids.

2903.302-2 Reporting requirements.

Potential anti-competitive practices, such as described in FAR 3.301, and antitrust law violations as described in FAR 3.303, evidenced in bids or proposals shall be reported to the Office of the Solicitor through the Head of the Contracting Activity with a copy to the Director, Directorate of Procurement and Grant Management. The Office of the Solicitor will provide reports to the Attorney General as appropriate.

Subpart 2903.4—Contingent Fees

2903.409 Misrepresentation or violation of the Convenant against Contingent Fees.

(a) Suspected misrepresentation or violations of the Convenant Against Contingent Fees shall be documented and reported promptly to the contracting officer for review and action under FAR 3.409.

(b) Suspected fraudulent or criminal violations shall be documented in a report and submitted by the contracting officer to the Office of the Solicitor prior to initiation of any actions outlined in FAR 3.409(b). A copy of the report shall be submitted to the Director, Directorate of Procurement and Grant Management.

Subpart 2903.5—Other Improper Business Practices

2903.502 Subcontractor kickbacks.

(a) Reports on suspected violations of the Antikickback Act as required by FAR 3.502(b) shall be prepared by the contracting officer and submitted by the head of the contracting activity to the Office of the Solicitor for further action. A copy of the report shall be submitted to the Director, Directorate of Procurement and Grant Management.

(b) The head of the contracting activity may initiate debarment or suspension action in accordance with FAR 9.406-2 or 9.407-2 and 2909.4 of this chapter.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.602 Exceptions.

(a) The Assistant Secretary for Administration and Management is authorized to except a contract from the policy in FAR 3.601.

(b) Negotiated contracts or grants or amendments to existing contracts or grants which constitute new acquisition (including those for the rental of real or personal property) may be entered into with former employees of DOL or with firms in which former employees are known to have a substantial interest, within a period of 1 year subsequent to the termination of the individual's employment by DOL, only with the prior written approval of the Assistant Secretary for Administration and Management.

2903.603 Responsibilities of the contracting officer.

Approval of a decision to grant an exception as provided in 2903.602 shall be documented by a written determination and findings prepared by the contracting officer for signature by the Assistant Secretary for Administration and Management. The determination and findings shall document compliance with FAR 3.603 and 2909.5; specify the compelling reason(s) for award; and be placed in the contract file.

PART 2904—ADMINISTRATIVE MATTERS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8922, Mar. 5, 1985, unless otherwise noted.

Subpart 2904.6—Contract Reporting

2904.601 Federal Procurement Data System.

(a) DOL's data collection point is the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(b) The SF 279, Individual Contract Action Report (over $10,000), and SF 281, Summary of Contract Actions of $10,000 or less, are due monthly on the tenth day of the month.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2905—PUBLICIZING CONTRACT ACTIONS

Subpart 2905.2—Synopsis of Proposed Contract Actions

Sec.
2905.202 Exceptions.

Subpart 2905.4—Release of Information

2905.403 Requests from Members of Congress.
2905.404 Release of long-range acquisition estimates.
2905.404-1 Release procedures.

Subpart 2905.5—Paid Advertisements

2905.502 Authority.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8922, Mar. 5, 1985, unless otherwise noted.

Subpart 2905.2—Synopsis of Proposed Contract Actions

2905.202 Exceptions.

The Procurement Executive is authorized to make the determination prescribed in FAR 5.202(b). A written determination documenting the reasons why advance notice is not appropriate or reasonable shall be submitted by the HCA to the Director, Directorate of Procurement and Grant Management, for appropriate action including communication with the officials listed in FAR 5.202(b).

[51 FR 40374, Nov. 6, 1986 and 53 FR 3839, Feb. 9, 1988]

Subpart 2905.4—Release of Information

2905.403 Requests from Members of Congress.

In addition to having access to the information available to the general public, Members of Congress shall, upon their request, be given full and detailed information regarding any particular DOL procurement. The information provided shall be fully responsive to the member's request unless such a response would disclose classified matter, information not to be released pursuant to law, business confidential information or information which would be prejudicial to the competitive process. The contracting officer shall promptly consult with the Office of the Solicitor and the Office of Legislative and Intergovernmental Affairs to determine whether circumstances exist which will allow the release of additional information. In such instances, the Congressional requestor shall be furnished an interim reply providing the information which is readily releasable. The interim reply shall describe the problem which precludes release of any requested materials and describe generally what steps, if any, are being taken to make such information available.

2905.404 Release of long-range acquisition estimates.

2905.404-1 Release procedures.

(a) Heads of contracting activities are authorized to release long-range acquistion estimates under the conditions in FAR 5.404-1.

(b) Offices contemplating the release of long-range acquisition planning estimates shall coordinate with the Office of Information and Public Affairs in advance of the release of such planning estimates.

Subpart 2905.5—Paid Advertisements

2905.502 Authority.

When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for such publication shall be obtained from the Head of the Contracting Activity or designee.

PART 2906—COMPETITION REQUIREMENTS

Subpart 2906.2—Full and Open Competition After Exclusion of Sources

Sec.
2906.202 Establishing or maintaining alternative sources.

Sec.

Subpart 2906.3—Other Than Full and Open Competition

2906.303 Justifications.
2906.303-1 Requirements.

Subpart 2906.5—Competition Advocates

2906.501 Requirement.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 51 FR 40374, Nov. 6, 1986 (Interim) and 53 FR 3839, Feb. 9, 1988 (Final), unless otherwise noted.

Subpart 2906.2—Full and Open Competition After Exclusion of Sources

2906.202 Establishing or maintaining alternative sources.

The Procurement Executive is authorized to make the determination prescribed in FAR 6.202(b). A written determination shall be submitted by the HCA to the Director, Directorate of Procurement and Grant Management.

Subpart 2906.3—Other Than Full and Open Competition

2906.303 Justifications.

2906.303-1 Requirements.

(a) As prescribed in the Department of Labor Manual Series (DLMS) 2, Chapter 830, any proposed noncompetitive aquisitions in excess of the small purchases limitation must be fully justified, submitted to the DOL Procurement Review Board and approved by the Assistant Secretary for Administration and Management and, in the case of research contracts, by the Assistant Secretary for Policy.

(b) The contracting officer is responsible for assuring that proposed acquisitions below the dollar level specified in paragraph (a) of this section are in compliance with FAR and DOLAR requirements regarding competition.

Subpart 2906.5—Competition Advocates

2906.501 Requirement.

(a) The Competition Advocate for the Department of Labor is the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, OASAM.

(b) The head of the agency has delegated the authority to the Procurement Executive to appoint the Agency and Procuring Activity Competition Advocates. The Procurement Executive has delegated authority to the Head of the Procuring Activity to appoint Procuring Activity Competition Advocates.

PART 2907—ACQUISITION PLANNING

Subpart 2907.1—Acquisition Plans

Sec.
2907.102 Policy.

Subpart 2907.3—Contractor Versus Government Performance

2907.307 Appeals.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8922, Mar. 5, 1985, unless otherwise noted.

Subpart 2907.1—Acquisition Plans

2907.102 Policy.

DOL Agencies and Offices shall develop acquisition plans for major system acquisitions and major projects in accordance with FAR subpart 7.1 when the potential benefit justifies their development. The Directorate of Procurement and Grant Management and the Procurement Review Board will review each DOL Agency/Office Annual Advance Procurement Plan to ensure compliance with this subpart.

Subpart 2907.3—Contractor Versus Government Performance

2907.307 Appeals.

An appeal of a decision to convert to contract or to continue in-house performance may be made by an affected party. Appeals shall be made in writing, be based only on specific alleged material deviation (or deviations), from OMB Circular A-76, and be supported by appropriate documentation. Appeals must be delivered within 15 working days of the announced decision, through the contracting officer and the Director, Directorate of Procurement and Grant Management, to the Under Secretary.

PART 2908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8923, Mar. 5, 1985, unless otherwise noted.

Subpart 2908.8—Acquisition of Printing and Related Supplies

2908.802 Policy.

(a) The Office of Printing, Directorate of Administrative Services and Safety and Health Programs, has been designated as the DOL liaison with the Joint Committee on Printing (JCP) and the Public Printer, Government Printing Office (GPO), on all matters related to printing.

(b) Except as provided in paragraphs 35-2 through 35-4 of the "Government Printing and Binding Regulations" of the Congressional Joint Committee on Printing, inclusion of printing as defined in FAR 8.801 in contracts for supplies and services is prohibited unless specifically approved in writing by the Directorate of Administrative Services and Safety and Health Programs.

PART 2909—CONTRACTOR QUALIFICATIONS

Subpart 2909.1—Responsible Prospective Contractors

Sec.
2909.105 Procedures.
2909.105-1 Obtaining information.

Subpart 2909.4—Debarment, Suspension, and Ineligibility

2909.400 Scope of subpart.
2909.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.
2909.405 Effect of listing.
2909.405-1 Continuation of current contracts.
2909.406 Debarment.
2909.406-1 General.
2909.406-3 Procedures.
2909.407 Suspension.
2909.407-1 General.
Sec.
2909.407-3 Procedures.

Subpart 2909.5—Organizational Conflicts of Interest

2909.503 Waiver.
2909.507 Procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8923, Mar. 5, 1985, unless otherwise noted.

Subpart 2909.1—Responsible Prospective Contractors

2909.105 Procedures.

2909.105-1 Obtaining information.

(a) In addition to the sources of information listed in FAR 9.105-1(c) to support determinations of responsibility or nonresponsibility, the contracting officer shall use, if available, performance evaluation reports on section 8(a) contractors (section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)) and construction and architect-engineer contractors (see 2936.201 and 2936.604).

(b) Contracting officers may obtain credit reports prior to the issuance of any loan, loan guarantee, contract or grant through the credit bureau service. The National Capital Service Center will award a contract for the credit bureau service for use by all DOL contracting activities until such services become available through an established GSA Federal Supply Schedule.

[50 FR 8923, Mar. 5, 1985, as amended at 51 FR 40374, Nov. 6, 1986; 53 FR 3839, Feb. 9, 1988]

Subpart 2909.4—Debarment, Suspension, and Ineligibility

2909.400 Scope of subpart.

This subpart prescribes DOL policies and procedures governing the debarment and suspension of contractors, the listing of debarred and suspended contractors, contractors declared ineligible (see FAR 9.403) and distribution of the list.

2909.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) The Directorate of Procurement and Grant Management, is responsible for accomplishing the actions required in FAR 9.404(c).

(b) The Directorate of Procurement and Grant Management, upon receipt of monthly issues of the consolidated list from GSA, shall distribute the issues to the heads of contracting activities.

(c) Weekly supplements to monthly lists shall be furnished to the heads of contracting activities by the Directorate of Procurement and Grant Management.

2909.405 Effect of listing.

The Director, Directorate of Procurement and Grant Management, is authorized to make the determinations listed in FAR 9.405(a). Requests for such determinations shall be submitted by the head of the contracting activity to the Director, Directorate of Procurement and Grant Management.

2909.405-1 Continuation of current contracts.

The Director, Directorate of Procurement and Grant Management, is authorized to take the actions listed in FAR 9.405-1.

2909.406 Debarment.

2909.406-1 General.

(a) The Director, Directorate of Procurement and Grant Management, is the debarring official for DOL and is authorized to debar a contractor for any of the causes in FAR 9.406-2, using the procedures in 2909.406-3.

(b) Exceptions to debarment made by another Executive Agency shall be made by the Director, Directorate of Procurement and Grant Management, in accordance with the conditions in FAR 9.406-1(c).

2909.406-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in FAR 9.406-2, becomes known to a DOL employee, the head of the contracting activity affected shall be notified. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation which documents the cause for debarment to the Director, Directorate of Procurement and Grant Management.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Directorate of Procurement and Grant Management, shall initiate proposed debarment by taking the actions listed in FAR 9.406-3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.406-3(b)(2), the Director, Directorate of Procurement and Grant Management, shall afford the contractor the opportunity to appear at an informal factfinding as required by FAR 9.406-3(b)(2)(i). The hearing shall be conducted by the Office of Administrative Law Judges and shall be held at a date and location convenient to the parties concerned. Subject to the provisions of 29 CFR part 18, the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings shall be made available to the contractor under the conditions in FAR 9.406-3(b)(2)(ii).

(d) *Decision and notice.* The Director, Directorate of Procurement and Grant Management, shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406-3(d), findings of fact of the Administrative Law Judge, and the conditions in FAR 9.406-4 and 9.406-5. Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.406-3(e).

2909.407 Suspension.

2909.407-1 General.

(a) The Director, Directorate of Procurement and Grant Management, is the suspending official for DOL and is authorized to suspend a contractor for any of the causes in FAR 9.407-2, using the procedures in 2909.407-3.

(b) The Director, Directorate of Procurement and Grant Management, is authorized to make the statement regarding suspension by another agency suspending official under the conditions in FAR 9.407-1(d).

2909.407-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in FAR 9.406-2, becomes known to a DOL employee, the head of the contracting activity affected shall be notified. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation, which documents the cause for suspension, to the Director, Directorate of Procurement and Grant Management.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of the Inspector General, as required, the Director, Directorate of Procurement and Grant Management, shall initiate suspension by taking the actions listed in FAR 9.407-3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.407-3(b)(2), the Director, Directorate of Procurement and Grant Management, shall afford the contractor the opportunity to appear at an informal hearing as required by FAR 9.407-3(b)(2)(i). The hearing shall be conducted under the conditions in 2909.407-3(c).

(d) *Suspension decisions.* The Director, Directorate of Procurement and Grant Management, shall make a final decision on suspension as prescribed in FAR 9.407-3(d). Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the provisions in FAR 9.407-3(d)(4).

Subpart 2909.5—Organizational Conflicts of Interest

2909.503 Waiver.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive any general rule or procedure in FAR 9.5 when its application in a particular situation would not be in the Government's interest. Pursuant to FAR 9.503, this authority may not be redelegated.

(b) Requests for waivers shall be made by the head of the contracting activity to the Director, Directorate of Procurement and Grant Management. Each request shall include:

(1) An analysis of the facts involving the potential or actual conflict including benefits and detriments to the Government and prospective contractors;

(2) A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and

(3) Identification of the provision(s) in FAR subpart 9.5 to be waived.

(c) In making determinations under 2909.503(a), the Director, Directorate of Procurement and Grant Management, shall request the opinion of the Office of the Solicitor.

2909.507 Procedures.

(a) If a prospective contractor disagrees with the decision of a contracting officer regarding an organizational conflict of interest provision and requests higher level review in accordance with FAR 9.507(c)(4) the matter shall be referred to the Director, Directorate of Procurement and Grant Management for review and final decision.

(b) Referrals shall be made by the head of the contracting agency concerned and include the contracting officer's decision and the position of the prospective contractor.

(c) In making determinations under 2909.507(a), the Director, Directorate of Procurement and Grant Management, shall request the opinion of the Office of the Solicitor.

PART 2910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

2910.004 Selecting specifications or descriptions for use.
2910.004-70 Brand name products or equal.
2910.007 Deviations.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8924, Mar. 5, 1985, unless otherwise noted.

2910.004 Selecting specifications or descriptions for use.

(a) In accordance with FAR 10.1004(b)(2), purchase descriptions shall not specify a product, or specific feature of a product, peculiar to a manufacturer unless it is determined in writing by the Office initiating the purchase request that the product, or specific product feature, is essential to the Government's requirements and other similar products will not meet these requirements. This determination shall be in writing and shall accompany the purchase requisition.

(b) A "brand name or equal" purchase description shall be used only under the conditions listed in FAR 10.004(b)(3) and in accordance with the policies and procedures in 2910.004-70.

2910.004-70 Brand name products or equal.

(a) *Limitations on use.* The identification of a requirement in a purchase description by use of one or more brand name products followed by the words "or equal" shall be used only under the conditions listed in FAR 10.004(b)(3). A "brand name product" means a current commercial product of a manufacturer described by its brand name, make, model number, catalog designation, or other description by which it is regularly offered for sale to the public in the commercial market place.

(b) *Invitation requirements.* (1) "Brand name or equal" purchase descriptions in invitations shall identify salient characteristics of the product (see 2910.004-70(b)(2)) and contain the following information to describe the specific item:

(i) Identification of the item by generic descriptions;

(ii) Make, model number, catalog designation (or other description), and identification of commercial catalog where it is listed; and

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(2) In accordance with the policy in FAR 10.002, whenever a "brand name or equal" purchase description is used, offerors shall be given the opportunity to offer products equal to the brand name if those products (including modifications thereto) satisfy the minimum needs of the Government. Therefore, all salient characteristics of the "brand name or equal" product which are determined by the office initiating the purchase request to be essential to the Government's minimum needs shall be identified separately under the heading of "Salient Characteristics" and included in the purchase description contained in the solicitation so the offeror understands the information to be submitted with its bid when offering an "equal" product for evaluation. In addition, the following certification shall be included at the end of each "brand name or equal" description in a solicitation for an offeror to identify its "equal" product:

> Offerors proposing to furnish an "equal" product, in accordance with the "Brand Name or Equal" provision of this solicitation, shall insert the following description for the product.
>
> Bidding on: ______________________
>
> Manufacturer's Name: ______________
>
> Address: __________________________
>
> Product Name (if any): _____________
>
> Product make, model, or catalog description:
>
> ___________________________________
>
> Offerors shall also be responsible for submitting all additional information on the above product necessary for the Government to determine whether the product offered meets the salient characteristics of the "brand name" as listed in the solicitation.

2910.007 Deviations.

(a) Heads of contracting activities are authorized to approve deviations and exceptions to specifications or standards listed in the Index of Federal Specifications and Standards when the exceptions listed under FAR 10.006 do not apply. The Director, Directorate of Procurement and Grant Management, shall be notified formally and provided a copy of each deviation or exception approved.

(b) Heads of contracting activities are responsible for accomplishing the actions required under FAR 10.007.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2913—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2913.1—General

Sec.

2913.106 Competition and price reasonableness.
2913.107 Solicitation and evaluation of quotations.

Subpart 2913.3—Fast Payment Procedure

2913.301 General.

Subpart 2913.4—Imprest Fund

2913.403 Agency responsibilities.

Subpart 2913.5—Purchase Orders

2913.503 Obtaining contractor acceptance and modifying purchase orders.
2913.503-70 Duplicate purchase orders.
2913.505 Purchase order and related forms.
2913.505-2 Agency order forms in lieu of optional forms 347 and 348.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8925, Mar. 5, 1985, unless otherwise noted.

Subpart 2913.1—General

2913.106 Competition and price reasonableness.

When other than the lowest responsive quotation from a responsible supplier is used as the basis for the purchase, the Contracting Officer shall include in the purchase file documentation of the reason(s) for rejecting any lower quotation and the name of the individual responsible for making the determination to reject such quotation.

2913.107 Solicitation and evaluation of quotations.

Standard Form 18, Request for Quotations, shall be used as prescribed in FAR 13.107(a) unless an agency equivalent form has been authorized for use by the Director, Directorate of Procurement and Grant Management.

Subpart 2913.3—Fast Payment Procedure

2913.301 General.

The fast payment procedure delineated in FAR Subpart 13.3 shall not be utilized by DOL.

Subpart 2913.4—Imprest Fund

2913.403 Agency responsibilities.

The DOL "Imprest Fund Handbook" incorporated in the Department of Labor Manual Series (DLMS 6, Chapter 1900, Handbook DLMS 6-5) contains internal DOL procedures for establishment, maintenance and use of imprest funds. Copies of the handbook may be obtained upon written request from the Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

[50 FR 8925, Mar. 5, 1985, as amended at 51 FR 40374, Nov. 6, 1986; 53 FR 3839, Feb. 9, 1988]

Subpart 2913.5—Purchase Orders

2913.503 Obtaining contractor acceptance and modifying purchase orders.

2913.503-70 Duplicate purchase orders.

If the vendor reports non-receipt, loss or other inability to locate an original purchase order and requests another copy, the purchasing officer may issue to the vendor a duplicate copy as the vendor's basis of performance. This second issue should be conspicuously marked "Duplicate Copy." To avoid the possibility of a duplicate shipment, a letter of transmittal or a notation on the purchase order should read as follows:

> This is a duplicate copy of the lost original purchase order, furnished in accordance with your request of ——— —— (Date). The Government will not be responsible for duplicate shipment.

[50 FR 8925, Mar. 5, 1985, as amended at 51 FR 40374, Nov. 6, 1986; 53 FR 3839, Feb. 9, 1988]

2913.505 Purchase order and related forms.

2913.505-2 Agency order forms in lieu of optional forms 347 and 348.

Department of Labor Form 1-90 (DL Form 1-90), entitled "Purchase Order" may be used by DOL in lieu of Optional Forms 347 and 348 prescribed in FAR 13.505.

PART 2914—SEALED BIDDING

Subpart 2914.2—Solicitation of Bids

Sec.

2914.203 Methods of soliciting bids.
2914.203-2 Dissemination of information concerning invitation for bids.
2914.205 Solicitation mailing lists.
2914.205-1 Establishment of lists.

Subpart 2914.4—Opening of Bids and Award of Contract

2914.404 Rejection of bids.
2914.404-1 Cancellation of invitations after opening.
2914.406 Mistakes in bids.
2914.406-3 Other mistakes disclosed before award.
2914.406-4 Disclosure of mistakes after award.
2914.407 Award.
2914.407-8 Protests against award.
2914.407-70 Award when only one bid is received.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8925, Mar. 5, 1985, unless otherwise noted.

Subpart 2914.2—Solicitation of Bids

2914.203 Methods of soliciting bids.

2914.203-2 Dissemination of information concerning invitation for bids.

Procedures for obtaining approval for paid advertisements in newspapers are contained in 2905.502.

2914.205 Solicitation mailing lists.

2914.205-1 Establishment of lists.

In accordance with FAR 14.205-1(b), prospective bidders which submit solicitation mailing list applications shall be notified by the Contracting Activity when added to a mailing list unless the bidder is expected to be issued a solicitation within thirty days after Government receipt of the application.

Subpart 2914.4—Opening of Bids and Award of Contract

2914.404 Rejection of bids.

2914.404-1 Cancellation of invitations after opening.

The head of the contracting activity (HCA) is authorized to make the written determination required by FAR 14.404-1(c).

[51 FR 40374, Nov. 6, 1986 and 53 FR 3839, Feb. 9, 1988]

2914.406 Mistakes in bids.

2914.406-3 Other mistakes disclosed before award.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to make the administrative determinations under FAR 14.406-3. This authority may not be redelegated except as set forth in paragraph (b) of 2914.406-3.

(b) If (1) a bidder requests permission to withdraw a bid rather than correct it, and (2) the evidence is determined convincing as to the mistake or (3) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the head of the contracting office is authorized to make a written determination permitting the bidder to withdraw the bid after review, in accordance with established procedures, and concurrence by the appropriate Office of the Solicitor. Copies of all determinations made pursuant to this authority shall be promptly transmitted to the Director, Directorate of Procurement and Grant Management. If evidence of the intended bid is clear and convincing, even though the bidder has not requested permission to correct the bid, the case shall be processed in accordance with paragraph (c) of 2914.406-3.

(c) Suspected or alleged mistakes in bids shall be processed in accordance with the requirements of FAR 14.406-3(g). The contracting officer shall submit a report together with the supporting data described in FAR 14.406-3(g)(3) through the head of the contracting activity to the Director, Directorate of Procurement and Grant Management.

(d) The Director, Directorate of Procurement and Grant Management, is responsible for maintaining records of administrative determinations as required in FAR 14.406-3(h).

2914.406-4 Disclosure of mistakes after award.

(a) The head of the contracting activity is authorized to make the administrative determinations in FAR 14.406-4 after concurrence is received from the Office of the Solicitor as required by FAR 14.406-4(d). This authority may not be redelegated.

(b) The contracting officer shall process a mistake and prepare a case file in accordance with the requirements of FAR 14.604-4(e). The file shall be submitted to the head of the contracting activity for determination.

2914.407 Award.

2914.407-8 Protests against award.

See DOLAR subpart 2933.1, "Protests".

[51 FR 40374, Nov. 6, 1986 and 53 FR 3839, Feb. 9, 1988]

2914.407-70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the contracting officer makes a written determination that (a) the specifications used in the invitation were not unduly restrictive, (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the contract file.

PART 2915—CONTRACTING BY NEGOTIATION

Subpart 2915.4—Solicitation and Receipt of Proposals and Quotations

2915.404 Presolicitation notices and conferences.
2915.405 Solicitations for information or planning purposes.
2915.405-1 General.
2915.413 Disclosure and use of information before award.
2915.413-1 Alternate I.

Subpart 2915.5—Unsolicited Proposals

2915.505 Content of unsolicited proposals.
2915.505-1 Unsolicited research proposals.
2915.506 Agency procedures.

Subpart 2915.6—Source Selection

2915.607 Disclosure of mistakes before award.
2915.608 Proposal evaluation.
2915.612 Formal source selection.

Subpart 2915.8—Price Negotiation

2915.803 General.
2915.804 Cost or pricing data.
2915.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
2915.805 Proposal analysis.
2915.805-5 Field pricing support.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8926, Mar. 5, 1985, unless otherwise noted.

Subpart 2915.4—Solicitation and Receipt of Proposals and Quotations

2915.404 Presolicitation notices and conferences.

A presolicitation conference (see FAR 15.404) shall not be used unless approved by the Head of the Contracting Activity or designee in accordance with Agency or Office procedures.

2915.405 Solicitations for information or planning purposes.

2915.405-1 General.

The written determination justifying use of a solicitation for information or planning purposes under FAR 15.405-1 shall be approved by the

Head of the Contracting Activity before issuance of the solicitation.

2915.413 Disclosure and use of information before award.

2915.413-1 Alternate I.

The Department of Labor shall employ the procedures in FAR Alternate I regarding disclosure and use of information.

Subpart 2915.5—Unsolicited Proposals

2915.505 Content of unsolicited proposals.

2915.505-1 Unsolicited research proposals.

In addition to the contents required by FAR 15.505, unsolicited proposals for research should contain a commitment to provide cost-sharing.

2915.506 Agency procedures.

(a) The contact points for submission of unsolicited proposals are those officials (Heads of Contracting Activities) with program responsibility listed in subpart 2901.6.

(b) Heads of Contracting Activities shall assure that unsolicited proposals are controlled, evaluated, safeguarded and disposed of in accordance with FAR Subpart 15.5

Subpart 2915.6—Source Selection

2915.607 Disclosure of mistakes before award.

The Head of the Contracting Activity is authorized to make the determination permitting proposal correction in accordance with the conditions in FAR 15.607(c)(3) and consultation with the Office of the Solicitor.

2915.608 Proposal evaluation.

The head of contracting activity (HCA) is authorized to make the determination required by FAR 15.608(b).

[51 FR 40374, Nov. 6, 1986 and 53 FR 3839, Feb. 9, 1988]

2915.612 Formal source selection.

(a) The Head of the Contracting Activity shall determine when a formal source selection process shall be used and shall establish procedures for implementing the requirements in FAR 15.612.

(b) The procedures established under (a) above shall be forwarded for the review and approval of the Director, Directorate of Procurement and Grant Management.

Subpart 2915.8—Price Negotiation

2915.803 General

(a) Where the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions to resolve the matter (see FAR 15.803), the contract action shall be referred to the Head of the Contracting Activity for final resolution.

(b) Resolution under paragraph (a) of this section, shall be documented and signed by the Head of the Contracting Activity, and included in the contract file.

2915.804 Cost or pricing data.

2915.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) The Head of the Contracting Activity is authorized to approve the contracting officer's finding supporting the unreasonableness of the lowest price (see FAR 15.804-3(b)(2)(iii).

(b) The Director, Directorate of Procurement and Grant Management, is authorized to waive the requirement for submission of certified cost or pricing data.

(c) Requests for waiver under paragraph (b) of this section, shall be submitted in writing by the Head of the Contracting Activity and shall contain a statement as to the reasons the waiver is necessary and the efforts made to obtain the data from the contractor or prospective contractor.

2915.805 Proposal analysis.

2915.805-5 Field pricing support.

(a) As prescribed in FAR 15.805-5(c), the contracting officer shall initiate a cost or pricing review by sending a written request to the Director, Directorate of Procurement and Grant Management, OASAM. The contracting officer shall allow at least 30 calendar days when assigning a deadline for receipt of the cost and price analysis report.

(b) Upon receipt of the cost or pricing review report, the contracting officer and the price analyst (if assigned) shall discuss any questions regarding the contents of the report with the reviewer. If a question cannot be resolved, or agreement cannot be reached on a recommendation in the report, the contracting officer shall prepare a written statement for the contract file which discusses the issue(s) in question and supports a final decision on the matter. An information copy of the statement shall be promptly forwarded to the Director, Directorate of Procurement and Grant Management.

PART 2916—TYPES OF CONTRACTS

Subpart 2916.2—Fixed Price Contracts

Sec.

2916.203 Fixed-price contracts with economic price adjustment.
2916.203-4 Contract clauses.

Subpart 2916.3—Cost-Reimbursement Contracts

2916.306 Cost-plus-fixed-fee contracts.

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603 Letter contracts.
2916.603-2 Application.

Subpart 2916.7—Agreements

2916.702 Basic agreements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8929, Mar. 5, 1985, unless otherwise noted.

Subpart 2916.2—Fixed Price Contracts

2916.203 Fixed-price contracts with economic price adjustment.

2916.203-4 Contract clauses.

An economic price adjustment clause based on cost indexes of labor or material may be used under the conditions listed in FAR 16.203-4(d) after approval by the Director, Directorate of Procurement and Grant Management, is obtained.

Subpart 2916.3—Cost-Reimbursement Contracts

§ 2916.306 Cost-plus-fixed-fee contracts.

The Contracting Officer is authorized to approve the determination establishing the basis for application of the statutory price or fee limitation prescribed in FAR 16.306(c)(2).

[51 FR 40374, Nov. 6, 1986 and 53 FR 3839, Feb. 9, 1988]

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603 Letter contracts.

2916.603-2 Application.

The Head of the Contracting Activity is authorized to extend the period for definitization of a letter contract required by FAR 16.603-2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

Subpart 2916.7—Agreements

2916.702 Basic agreements.

Copies of basic agreements negotiated with contractors in accordance with FAR 16.702 shall be furnished by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, promptly after execution by the Government.

PART 2917—SPECIAL CONTRACTING METHODS

Subpart 2917.2—Options

Sec.

2917.203 Solicitations.
2917.206 Evaluation.

Subpart 2917.4—Leader Company Contracting

2917.402 Limitations.

Subpart 2917.5—Interagency Acquisitions Under the Economy Act

2917.502 General.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8929, Mar. 5, 1985, unless otherwise noted.

Subpart 2917.2—Options

2917.203 Solicitations.

Option quantities in excess of the 50 percent limit prescribed in FAR 17.203(g)(2) may, in unusual circumstances, be approved by the Head of the Contracting Activity. The documentation required by FAR 17.205(a) shall include a written justification to fully support the need for such action.

2917.206 Evaluation.

The Head of the Contracting Activity shall make the written determination required by FAR 17.206(a). This determination is required before use of the solicitation provision at FAR 52.217-5, Evaluation of Options, is authorized. See FAR 17.208(c).

Subpart 2917.4—Leader Company Contracting

2917.402 Limitations.

Use of leader company contracting for a product, subject to the limitations in FAR 17.402, shall require the advance authorization of the Director, Directorate of Procurement and Grant Management. Authorization requests shall document the circumstances requiring such action and shall be submitted by the Head of the Contracting Activity.

Subpart 2917.5—Interagency Acquisitions Under the Economy Act

2917.502 General.

The head of the contracting activity is authorized to make the determination prescribed in FAR 17.502 in accordance with the requirements contained in FAR 17.503.

[51 FR 40374, Nov. 6, 1986 and 53 FR 3839, Feb. 9, 1988]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2919.2—Policies

Sec.
2919.201 General policy.
2919.202 Specific policies.
2919.202-2 Locating small business sources.
2919.202-5 Data collection and reporting requirements.
2919.202-70 Annual plans and program goals.

Subpart 2919.5—Set-Asides for Small Business

2919.501 General.
2919.503 Setting aside a class of acquisitions.
2919.503-70 Class set-aside for construction acquisitions.
2919.505 Rejection of set-aside recommendations.
2919.506 Withdrawal or modification of set-asides.

Subpart 2919.6—Certificates of Competency and Determinations of Eligibility

2919.602 Procedures.
2919.602-1 Referrals.

Subpart 2919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

2919.705 Responsibilities of the contracting officer under the subcontracting assistance program.
2919.705-3 Solicitations.
2919.705-4 Reviewing the subcontracting plan.
2919.705-5 Awards involving subcontracting plans.
2919.705-6 Postaward responsibilities of the contracting officer.
2919.708 Solicitation provisions and contract clauses.

Subpart 2919.8—Contracting With the Small Business Administration

919.802 Selecting firms for DOL acquisitions.
919.803 Selecting acquisitions for the 8(a) program.
919.810 Contract administration.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8929, Mar. 5, 1985, unless therwise noted.

Subpart 2919.2—Policies

2919.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for performing all functions and duties prescribed in FAR 19-201(c) and for:

(1) Developing and monitoring policies, procedures and regulations for effective administration of the Department's small business and small disadvantaged business program;

(2) Coordinating issues with the small and disadvantaged business specialist (SDBS) in each contracting office regarding the Department's small and small disadvantaged business program;

(3) Conducting surveys and reviews of DOL contracting offices related to the small business and small disadvantaged business program, recommending changes and corrective action, as appropriate; and

(4) Representing the Department before other Government agencies on matters primarily affecting small business, small disadvantaged business, women-owned business, historically black colleges and universities (HBCU), and advising the Under Secretary and other officials on matters relating to the program.

(b) The Head of the Contracting Activity, or designee, in addition to the requirements of FAR 19.201(b), shall be responsible for:

(1) Establishing annual goals for the small disadvantaged business programs; and

(2) Appointing, as prescribed in FAR 19.201(d), a small and disadvantaged business specialist (SDBS) for each contract office.

(c) The small and disadvantaged business specialist (SDBS) shall serve as advisor to the Head of the Contracting Activity, and shall be the contracting activity's central point of contact for inquiries and advice pertaining to the small business and small disadvantaged business program. The SDBS shall be responsible for:

(1) Maintaining a program to locate capable small business, small disadvan-

taged business, and women-owned business sources to fulfill the Department's acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, women-owned business concerns and HBCU on DOL contracting and subcontracting opportunities and other acquisition matters;

(3) Ensuring that contracting offices are kept abreast of new or revised small business, small disadvantaged business, women-owned business and HBCU regulations, policies, procedures and other related information;

(4) Assisting in the Agency's advance acquisition planning process;

(5) Reviewing all requirements to assure that small business, small disadvantaged business, women-owned business, businesses located in labor surplus areas (LSA) and HBCU will be afforded an equitable opportunity to compete, and as appropriate, initiating recommendations for small business set-asides;

(6) Reviewing proposed requirements for possible breakout of items or services suitable for acquisition from participants of the small and disadvantaged business programs;

(7) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to better qualify for future awards;

(8) Participating in the evaluation of small business and small disadvantaged business subcontracting plans for prime contractors and other evaluation activities, as appropriate;

(9) Maintaining a list of products and services which have been placed as repetitive small business set-asides;

(10) Developing and maintaining records necessary to demonstrate maximum support for DOL's preferential programs, ensuring compilation of current, accurate, and complete data; and preparing all reports pertaining to program activities;

(11) Participating in the development, implementation, and review of automated source systems to assure that the interest of small business, small disadvantaged business, women-owned business, and HBCU are fully considered;

(12) Participating, as required, in governmental-industry conferences to assist small business, disadvantaged business, women-owned business, and HBCU, including Congressionally-sponsored Federal acquisition conferences, minority business enterprises acquisition seminars, and business opportunity committee meetings;

(13) Initiating action, in writing, with appropriate personnel to assure the availability of adequate specifications and drawings, when necessary, to obtain small business, small disadvantaged business, women-owned business and HBCU participation in current and future acquisitions.

2919.202 Specific policies.

2919.202-2 Locating small business sources.

(a) It is the policy of the DOL to utilize the services of the SBA Procurement Automatic Source System (PASS) to identify small and small disadvantaged business sources. Obtaining sources from PASS or from local mailing lists does not negate the requirement that the contracting officer advertise the acquisition in accordance with FAR 5.

(b) Historically black colleges and universities shall be considered as sources for fulfilling requirements except for small business set-asides.

2919.202-5 Data collection and reporting requirements.

In addition to the requirements of FAR 19.202-5, DOL Agencies/Offices shall accurately measure the extent of participation by historically black colleges and universities in their acquisitions in terms of the total value of contracts placed with such organizations during each fiscal year, and report data to the OSDBU at the end of the second and fourth quarters of each fiscal year. The OSDBU shall forward the Department's consolidated data to the Department of Education.

2919.202-70 Annual plans and program goals.

(a) Heads of Contracting Activities shall develop annual goals for each category of the small business and small disadvantaged business utilization programs, which shall include projected acquisition awards to small businesses, minority businesses, 8(a) concerns, women-owned businesses, and HBCU.

(1) To the greatest extent possible, the goals shall be based on advance procurement plans, budget justifications, and past performance.

(2) Goals must comply with the criteria established by OSDBU.

(b) Goals are to be submitted to the OSDBU upon request of the Director. OSDBU shall analyze and evaluate proposed goals, consolidate departmental goals and forward such to the Small Business Administration (SBA), the General Services Administration (GSA), and the Minority Business Development Agency (MBDA), Department of Commerce.

(c) OSDBU may be required to negotiate final departmental goals, depending on SBA, GSA, and/or MBDA concurrence or nonconcurrence.

Subpart 2919.5—Set-Asides for Small Business

2919.501 General.

(a) The SDBS shall review individual requirements prior to issuance of solicitations to determine the suitability of the acquisition for award to the SBA under the section 8(a) Program (see FAR 19.803).

(b) When the requirement cannot be awarded under section 8(a) procedures, the SDBS shall review individual requirements to determine the feasibility of small business set-asides in the order of precedence set forth in FAR 19.504. The SDBS recommendation shall be entered on Form DL1-2004, "Small Business Determination," with the reasons for the "pro" or "con" set-aside recommendation. The form shall be placed in the contract file.

(c) Upon receipt of the SDBS recommendation, the contracting officer shall promptly approve or disapprove the SDBS recommendation, stating in writing the reasons for any disapproval. If the contracting officer disapproves the SDBS recommendation, the proposed acquisition shall be promptly referred to the SBA PCR where available, for review; or where no SBA PCR is available, to the Head of the Contracting Activity. All negative recommendations shall be forwarded concurrently to the OSDBU.

(d) All requirements expected to exceed $10,000 which have not been set-aside for small business shall be further reviewed by the SBA PCR, who shall indicate approval or disapproval of the SDBS/contracting officer's negative recommendation on Form DL 1-2004. If the SBA disapproves the SDBS/contracting officer's recommendation, the proposed action shall be appealed as provided in FAR 19.402(c)(3).

(e) All future requirements for products or services previously acquired on a small business set-aside basis and which are not subject to simplified small purchase procedures, shall be acquired on the basis of a repetitive set-aside.

2919.503 Setting aside a class of acquisitions.

2919.503-70 Class set-aside for construction acquisitions.

(a) Each requirement for construction, alterations, maintenance, and repair (including architect-engineer services), estimated to cost up to $2 million shall be set aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn only in accordance with the procedures of FAR 19.506 and 2919.506 if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction acquisitions in excess of $2 million shall be considered on a case-by-case basis under conditions prescribed in FAR 19.502-2.

2919.505 Rejection of set-aside recommendations.

The Under Secretary of Labor shall make final decisions on any appeals of the Administrator of SBA concerning

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a DOL contracting officer's adverse set-aside recommendation. The contracting officer's written justification in support of the decision to reject the set-aside recommendation shall be approved by the Head of the Contracting Activity. The justification shall then be forwarded for review through the Director, Directorate of Procurement and Grant Management, and the Director, OSDBU, to the Under Secretary of Labor.

2919.506 Withdrawal or modification of set-asides.

Disagreements between the contracting officer and the SDBS concerning withdrawals or modifications of individual or class set-asides shall be resolved by the SBA PCR in the National Office, or by the Head of the Contracting Activity where no SBA PCR is available. The SDBS shall concurrently notify the OSDBU of such disagreements.

Subpart 2919.6—Certificates of Competency and Determinations of Eligibility

2919.602 Procedures.

2919.602-1 Referrals.

Referrals by the contracting officer in accordance with FAR 19.602-1 shall be approved by the head of the contracting activity prior to submission to the appropriate SBA office. The contracting officer shall forward copies of each referral to the Director, OSDBU.

Subpart 2919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

2919.705 Responsibilities of the contracting officer under the subcontracting assistance program.

2919.705-3 Solicitations.

The contracting officer shall forward to the OSDBU any solicitation expected to result in a contract exceeding $500,000 ($1 million for construction of a public facility) prior to release to the public to ensure that appropriate subcontracting provisions are included in the Request for Proposals or Invitations for Bids. The OSDBU shall be allowed up to five working days for review of the solicitation, depending on the circumstances and complexity of the individual procurement.

2919.705-4 Reviewing the subcontracting plan.

The OSDBU shall be afforded the opportunity to review subcontracting plans submitted by apparent successful offerors to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer needed changes to subcontracting plans determined to be unacceptable.

2919.705-5 Awards involving subcontracting plans.

The contracting officer shall forward for review, upon request of the Director, OSDBU, any acquisition package prior to execution of any negotiated contractual document requiring subcontracting plans.

2919.705-6 Postaward responsibilities of the contracting officer.

(a) The contracting officer shall forward to the Director, OSDBU, a copy of any subcontracting plan that was incorporated into a contract or contract modification.

(b) The contracting officer shall maintain a list of active prime contracts containing a subcontracting plan.

(c) Contracting officers shall collect quarterly and semi-annually subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. Copies of the semi-annual report, Standard Form 294 (Subcontracting Report for Individual Contracts), and the quarterly report, Standard Form 295 (Summary Subcontracting Report), shall be forwarded to the Director, OSDBU, not later than the 30th day of the month following the close of the reporting period.

2919.708 Solicitation provisions and contract clauses.

Advance approval is required prior to including any small and small disadvantaged business concerns incentive subcontracting provisions in any contract. Requests for approval shall be submitted by the Head of the Contracting Activity through the Director, Directorate of Procurement and Grant Management, to the Director, OSDBU.

Subpart 2919.8—Contracting With the Small Business Administration

2919.802 Selecting firms for DOL acquisitions.

Contracting opportunities marketed by individual 8(a) firms may be reserved for the firm or group of firms which identified the opportunity; however, each 8(a) firm or group of firms nominated by DOL for a specific requirement must be approved by SBA for that particular requirement prior to any DOL technical discussions with the firm(s).

2919.803 Selecting acquisitions for the 8(a) program.

(a) Each DOL Agency shall identify in tentative Annual Advance Procurement Plans acquisitions to be fulfilled by 8(a) firms. Such tentative plans shall provide detailed descriptions of the nature of the services or work, or any other information pertinent to the requirement.

(b) Project officers shall also be responsible for cooperating with the OSDBU to actively locate and identify qualified 8(a) sources and to structure and tailor acquisitions to permit their participation.

2919.810 Contract administration.

(a) Contracting officers, or designees, shall conduct periodic evaluations relative to the performance of an 8(a) contract at various stages of the contract period of performance. Any problems encountered during the performance evaluation which cannot be resolved shall be referred to OSDBU for subsequent review and discussion with the appropriate SBA official.

(b) The OSDBU and SBA are to be notified at least 45 days prior to initiating final action to terminate a section 8(a) contract.

PART 2920—LABOR SURPLUS AREA CONCERNS

Subpart 2920.1—General

Sec.
2920.102 General policy.

Subpart 2920.2—Set-Asides

2920.201 Set-asides for labor surplus area concerns.
2920.201-1 Total set-asides.
2920.201-70 Set-asides for construction acquisitions.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8932, Mar. 5, 1985, unless otherwise noted.

Subpart 2920.1—General

2920.102 General policy.

It is the policy of the Department of Labor (DOL) to award acquisitions with eligible labor-surplus area (LSA) concerns in accordance with FAR part 20. Responsibility for implementing the DOL LSA program is assigned to the Office of Small and Disadvantaged Business Utilization.

Subpart 2920.2—Set-Asides

2920.201 Set-asides for labor surplus area concerns.

2920.201-1 Total set-asides.

Acquisitions shall be reviewed for potential combined small business/LSA set-aside consideration in accordance with FAR 19.501 and 2919.501.

2920.201-70 Set-asides for construction acquisitions.

(a) As prescribed in 2919.503-70, all acquisitions for construction, alterations, maintenance and repair (including architect-engineer services) estimated to cost up to $2 million shall be set-aside on a class basis for combined small business/LSA concern when the construction site is located in a LSA.

(b) Small business/LSA set-aside preference for construction acquisitions in excess of $2 million shall be considered on a case-by-case basis under conditions prescribed in FAR 20.201-1.

PART 2922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2922.1—Basic Labor Policies

Sec.

2922.101 Labor relations.
2922.101-3 Reporting labor disputes.
2922.101-4 Removal of items from contractor facilities affected by work stoppage.
2922.103 Overtime.
2922.103-4 Approvals.

Subpart 2922.6—Walsh-Healy Public Contracts Act

2922.604 Exemptions.
2922.604-2 Regulatory exemptions.
2922.608 Procedures.
2922.608-4 Award pending final determination.

Subpart 2922.8—Equal Employment Opportunity

2922.803 Responsibilities.
2922.804 Affirmative action programs.
2922.804-2 Construction.
2922.805 Procedures.
2922.807 Exemptions.

Subpart 2922.13—Special Disabled and Vietnam Era Veterans

2922.1303 Waivers.
2922.1306 Complaint procedures.

Subpart 2922.14—Employment of the Handicapped

2922.1403 Waivers.
2922.1406 Complaint procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8932, Mar. 5, 1985, unless otherwise noted.

Subpart 2922.1—Basic Labor Policies

2922.101 Labor relations.

2922.101-3 Reporting labor disputes.

Potential or actual labor disputes that may interfere with contract performance shall be reported by the contracting activity to the Office of the Solicitor for legal advice or assistance.

2922.101-4 Removal of items from contractor facilities affected by work stoppage.

Prior to initiating any action under FAR 22.101-4 for removal of items from contractors' facilities, the contracting officer shall obtain legal advice from the Office of the Solicitor.

2922.103 Overtime.

2922.103-4 Approvals.

The Head of the Contracting Activity is authorized to approve the use of overtime in accordance with the limitations in FAR 22.103-4(a).

Subpart 2922.6—Walsh-Healy Public Contracts Act

2922.604 Exemptions.

2922.604-2 Regulatory exemptions.

The Secretary of Labor may exempt contracts from the Walsh Healy Public Contracts Act under FAR 22.604(c). A written finding justifying the exemption (see FAR 22.604-2(c)) shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2922.608 Procedures.

2922.608-4 Award pending final determination.

The contracting officer's certification for award under FAR 22.608-4(a) shall be approved by the Head of the Contracting Activity.

Subpart 2922.8—Equal Employment Opportunity

2922.803 Responsibilities.

Matters involving the applicability of Executive Order 11246 and implementing regulations of the Secretary of Labor to an acquisition or a class of acquisitions shall be reduced to writing by the contracting officer and forwarded through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for resolution.

2922.804 Affirmative action programs.

2922.804-2 Construction.

Heads of Contracting Activities are responsible for maintaining lists of geographical areas subject to affirmative action requirements under FAR 22.804-2. Lists of areas for which OFCCP has designated specific affirmative action requirements are available through OFCCP. The list, including updates or revisions, shall be distributed to all contract offices which acquire construction.

2922.805 Procedures.

The contract office shall maintain ample supplies of the poster (OFCCP-1420) entitled, "Equal Opportunity is the Law" for use as required in FAR 22-805(b). The poster (stock number 7690-00-926-8988) may be ordered from the nearest regional GSA Supply Depot.

2922.807 Exemptions.

(a) The Assistant Secretary for Administration and Management shall make the determinations in FAR 22.807(a)(1).

(b) Requests for exemptions under FAR 22.807 (a)(1), (a)(2), and (b)(5) shall be submitted in writing in accordance with FAR 22.807(c) by the contracting officer, through the Head of the Contracting Activity, to the Director, Directorate of Procurement and Grant Management, for further action.

Subpart 2922.13—Special Disabled and Vietnam Era Veterans

2922.1303 Waivers.

(a) The Assistant Secretary for Administration and Management is authorized to (1) waive any or all terms of the clause at FAR 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, under the conditions prescribed in FAR 22.1303(a) and (2) waive any requirement in FAR subpart 22.13 as prescribed in FAR 22.1303(b).

(b) Requests for waivers under (a) above shall be made in writing by the contracting officer and submitted through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2922.1306 Complaint procedures.

The contracting office shall forward complaints received about the Administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972 directly to the Assistant Secretary for Veteran's Employment Service, DOL, as prescribed in FAR 22.1306.

Subpart 2922.14—Employment of the Handicapped

2922.1403 Waivers.

(a) The Assistant Secretary for Administration and Management is authorized to (1) waive any or all of the terms of the clause at FAR 52.222-36, Affirmative Action for Handicapped Workers, under the conditions prescribed in FAR 22.1403(a) and (2) waive any requirement in FAR subpart 22.14 as prescribed in FAR 22.1403(b).

(b) Requests for waivers under paragraph (a) of this section, shall be made in writing by the contracting officer and submitted through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management.

2922.1406 Complaint procedures.

The contracting office shall forward complaints received about administration of section 503 of the Rehabilitation Act of 1973, as amended, directly to the OFCCP as prescribed in FAR 22.1406.

PART 2923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 2923.1—Pollution Control and Clean Air and Water

Sec.
2923.104 Exemptions.
2923.107 Compliance responsibilities.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8933, Mar. 5, 1985, unless otherwise noted.

Subpart 2923.1—Pollution Control and Clean Air and Water

2923.104 Exemptions.

(a) The Assistant Secretary for Administration and Management is authorized to exempt controls from the requirements of FAR subpart 23.1 under the conditions in FAR 23.104(c).

(b) Requests for exemption shall be made in writing by the contracting officer and forwarded through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2923.107 Compliance responsibilities.

Conditions involving noncompliance with clean air or water standards in facilities used in performing nonexempt contracts shall be reported in writing by the contracting officer to the Head of the Contracting Activity for transmittal directly to the EPA Administrator in accordance with FAR 23.107. A copy of the report shall be promptly sent to the Director, Directorate of Procurement and Grant Management.

PART 2924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2924.1—Protection of Individual Privacy

Sec.
2924.103 Procedures.

Subpart 2924.2—Freedom of Information Act

2924.202 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Source: 50 FR 8934, Mar. 5, 1985, unless otherwise noted.

Subpart 2924.1—Protection of Individual Privacy

2924.103 Procedures.

See 29 CFR part 70a.—Protection of Individual Privacy on Records, for the DOL Regulations relating to the maintenance or disclosure of information from systems of records on individuals.

Subpart 2924.2—Freedom of Information Act

2924.202 Policy.

See 29 CFR part 70—Examination and Copying of Department of Labor Records, for the DOL regulations implementing the Freedom of Information Act.

PART 2925—FOREIGN ACQUISITION

Subpart 2925.1—Buy American Act—Supplies

Sec.
2925.102 Policy.
2925.105 Evaluating offers.
2925.108 Excepted articles, materials, and supplies.

Subpart 2925.2—Buy American Act—Construction Materials

2925.202 Policy.
2925.203 Evaluating offers.
2925.204 Violations.

Subpart 2925.3—Balance of Payments Program

2925.302 Policy.
2925.304 Excess and non-excess foreign currencies.

Subpart 2925.7—Restrictions on Certain Foreign Purchases

2925.703 Exceptions.

Subpart 2925.9—Omission of the Examination of Records Clause

2925.903 Conditions for omission.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Source: 50 FR 8934, Mar. 5, 1985, unless otherwise noted.

Subpart 2925.1—Buy American Act—Supplies

2925.102 Policy.

(a) The Assistant Secretary for Administration and Management shall make the determinations prescribed in FAR 25.102 (a)(2) and (a)(3).

(b) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.102(a)(4) in accordance with the procedures in 2925.108.

(c) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2925.105 Evaluating offers.

(a) In unusual circumstances, the Assistant Secretary for Administration and Management may determine to use evaluation differentials other than those prescribed in FAR 25.105 for a particular acquisition.

(b) Requests for use of other evaluation differentials shall be directed by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management for further action.

2925.108 Excepted articles, materials, and supplies.

(a) Determinations for additional articles, materials, and supplies not included in the list under FAR 25.108(d) shall be made by the Director, Directorate of Procurement and Grant Management.

(b) Determinations shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity for approval.

(c) Contracting activities which have information justifying the removal of an item from the list under FAR 25.108(d) shall submit such information to the Director, Directorate of Procurement and Grant Management, for further disposition as prescribed in FAR 25.108(c).

Subpart 2925.2—Buy American Act—Construction Materials

2925.202 Policy.

(a) The Assistant Secretary for Administration and Management shall make the determinations prescribed in FAR 25.202(a)(2) and 2925.203.

(b) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.202(a)(3) in accordance with the procedures in 2925.108.

(c) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2925.203 Evaluating offers.

Unless the Assistant Secretary for Administration and Management determines otherwise, when the cost of a comparable domestic construction material exceeds by more than 6 percent for large business or 12 percent for small business or labor surplus area set-aside the cost of a foreign construction material proposed in an offer, use of the domestic construction material would unreasonably increase the cost of the contract and use of the foreign construction material is authorized and acceptable. This evaluation shall be made for each foreign construction material proposed in an offer and not specifically excepted by the solicitation. The cost of construction material shall be computed to include all delivery costs to the construction site, and the cost of foreign construction material shall also include any applicable duty (whether or not a duty-free entry certificate may be issued). The acceptable offer that remains low after adding (for evaluation purposes only) 6 percent or 12 percent, as applicable, of the cost of all foreign construction materials shall be considered the successful offer. The contract awarded under these circumstances shall contain a list of the authorized foreign construction materials as required by FAR 25.202(c) and the clause at FAR 52.225-5, Buy American Act—Construction Materials.

2925.204 Violations.

Failure of the contractor to comply with the clause at FAR 52.225-5, Buy American Act—Construction Materials, shall be documented in a report by the contracting officer and submitted to the Head of the Contracting Activity for initiation of debarment action in accordance with subpart 2909.4.

Subpart 2925.3—Balance of Payments Program

2925.302 Policy.

(a) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.302(b)(3) and 25.304(c). Differentials greater than 50 percent may be authorized as prescribed in FAR 25.302(c).

(b) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2925.304 Excess and non-excess foreign currencies.

The Director, Directorate of Procurement and Grant Management, shall consult with the Office of Management and Budget as required in FAR 25.304(c) prior to making the determination in 2925.302(a).

Subpart 2925.7—Restrictions on Certain Foreign Purchases

2925.703 Exceptions.

(a) The Assistant Secretary for Administration and Management is authorized to approve exceptions, as prescribed in FAR 25.703, for all contracts other than small purchases.

(b) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

Subpart 2925.9—Omission of the Examination of Records Clause

2925.903 Conditions for omission.

(a) The Assistant Secretary for Administration and Management shall make the determination prescribed in FAR 25.903 (a)(1) and (a)(2).

(b) Determinations under (a) above shall be prepared by the contracting officer in accordance with the requirements of FAR 25.904 and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

(c) The report required by FAR 25.903(b) shall be prepared and forwarded by the Directorate of Procurement and Grant Management.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2928—BONDS AND INSURANCE

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8935, Mar. 5, 1985, unless otherwise noted.

Subpart 2928.2—Sureties

2928.203 Options in lieu of sureties.

Upon receipt of any of the types of securities listed in FAR 28.203-1 (except bonds or notes received in the District of Columbia) or FAR 28.203-2, the contracting officer shall turn the securities over to the finance office.

PART 2929—TAXES

Subpart 2929.1—General

Sec.
2929.101 Resolving tax problems.

Subpart 2929.3—State and Local Taxes

2929.303 Applications of State and local taxes to Government contractors and subcontractors.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8935, Mar. 5, 1985, unless otherwise noted.

Subpart 2929.1—General

2929.101 Resolving tax problems.

Contract tax problems or questions shall be referred by the contracting officer to the Office of the Solicitor for resolution.

Subpart 2929.3—State and Local Taxes

2929.303 Applications of State and local taxes to Government contractors and subcontractors.

(a) Contractors to be treated as agents of the Government for the purposes set forth in FAR 29.303(a) shall require the written review and approval of the Assistant Secretary for Administration and Management.

(b) Requests for approval under (a) above shall be submitted by the Head of the Contracting Activity, through the Office of the Solicitor, to the Director, Directorate of Procurement and Grant Management, for further action.

PART 2930—COST ACCOUNTING STANDARDS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8935, Mar. 5, 1985, unless otherwise noted.

Subpart 2930.3—CAS Contract Requirements

2930.304 Waiver.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive CASB requirements as provided in FAR 30.304(c).

(b) Requests for waivers under (a) above shall be prepared by the contracting officer as prescribed in FAR 30.304(a) and submitted by the Head of the Contracting Activity.

PART 2931—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8935, Mar. 5, 1985, unless otherwise noted.

Subpart 2931.1—Applicability

2931.101 Objectives.

Individual and class deviations concerning cost principles in FAR part 31 shall be processed as prescribed in subpart 2901.4.

PART 2932—CONTRACT FINANCING

Subpart 2932.1—General

Sec.
2932.102 Description of contract financing methods.

Subpart 2932.4—Advance Payments

2932.402 General.

Sec.

Subpart 2932.5—Progress Payments Based on Costs

2932.502 Preaward matters.
2932.502-2 Contract finance office clearance.

Subpart 2932.6—Contract Debts

2932.605 Responsibilities and cooperation among Government officials.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8935, Mar. 5, 1985, unless otherwise noted.

Subpart 2932.1—General

2932.102 Description of contract financing methods.

(a) Progress payments based on a percentage or stage of completion accomplished are authorized for use in contracts for construction, alteration, or repair.

(b) The Head of the Contracting Activity, or designee, is authorized to approve the use of progress payments based on percentage or stage of completion accomplished for contracts other than those listed in paragraph (a) of this section.

(c) Requests for approval under paragraph (b) of this section, shall be in the form of a written determination by the contracting officer that:

(1) Use of progress payments based on costs (see FAR subpart 32.5) is impracticable; and

(2) Adequate measures exist for determining percentage or stage of completion as a basis for determining payment.

Subpart 2932.4—Advance Payments

2932.402 General.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR subpart 32.4.

(b) The contracting officer shall review and analyze the contractor's application for advance payments to determine if it meets the information requirements of FAR 32.408. Applications which do not contain the required information shall not be processed until such information is obtained from the contractor.

(c) The contracting officer shall submit a recommendation for approval or disapproval of the contractor's request through the Head of the Servicing Finance Office (see FAR 32.402(e)(2)) to the Head of the Contracting Activity for transmittal to the Director, Directorate of Procurement and Grant Management, under paragraph (a) of this section. Recommendations which do not contain the information required by FAR 32.409-1 or FAR 32.409-2 will not be processed by the Directorate of Procurement and Grant Management.

Subpart 2932.5—Progress Payments Based on Costs

2932.502 Preaward matters.

2932.502-2 Contract finance office clearance.

(a) The contracting officer shall obtain the approval of the Head of the Contracting Activity before providing a progress payment rate higher than the customary rates prescribed in FAR 32.501-1.

(b) For deviations to progress payment terms prescribed under FAR part 32, the contracting officer shall obtain approval as prescribed in 2901.403.

(c) The contracting officer shall obtain the approval of the servicing finance office for the contract before taking the action in FAR 32.502-2.

Subpart 2932.6—Contract Debts

2932.605 Responsibilities and cooperation among Government officials.

(a) The DOL contracting officer has primary responsibility for determining the amount of contract debt and notifying the cognizant finance office of such debt due the Government. The servicing DOL finance office making payments under the contract has primary responsibility for debt collection.

(b) Each DOL Agency/Office is responsible for developing an internal debt collection system and prescribing internal procedures for collection of debts, including contract debts covered under FAR subpart 32.6. Agency/Office procedures should be in conformance with policies and procedures issued by DOL.

PART 2933—PROTESTS, DISPUTES, AND APPEALS

Subpart 2933.1—Protests

Sec.
2933.102 General.
2933.103 Protests to the DOL Agency.
2933.104 Protests to the GAO.
2933.105 Protests to the General Services Administration Board of Contract Appeals.

Subpart 2933.2—Disputes and Appeals

2933.203 Applicability.
2933.203-70 Department of Labor Board of Contract Appeals.
2933.209 Suspected fraudulent claims.
2933.211 Contracting officer's decision.
2933.212 Contracting officer's duties upon appeal.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2933.1—Protests

SOURCE: 51 FR 40375, Nov. 6, 1986, and 53 FR 3839, Feb. 9, 1988, unless otherwise noted.

2933.102 General.

The Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, shall be responsible for coordinating bid protests filed with the General Accounting Office (GAO). All communications relative to protests filed with GAO or GSBCA shall be coordinated with the Director, Office of Procurement and Grant Policy. Bid protests concerning automatic data processing (ADP) acquisitions filed with the General Services Administration Board of Contract Appeals (GSBCA) shall be coordinated by the contracting officer.

2933.103 Protests to the DOL Agency.

When protests are filed with a DOL Agency and received before award, the contracting office shall obtain the advice of the Director, Office of Procurement and Grant Policy, before making the determination under FAR 33.103(a).

2933.104 Protests to the GAO.

(a) *Notice of protest.* Upon being advised telephonically by GAO or the receipt of a protest before or after award, the Office of Procurement and Grant Policy shall inform the appropriate contracting officer and request preparation of the protest report required by FAR 33.104(a)(2). For GAO protests concerning ADP acquisitions, the Office of Procurement and Grant Policy shall also inform the Director, Directorate of Information Resources Management, who, in turn, shall notify the appropriate DOL Agency Information Resources Management (IRM) contact. As required by FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor, if the protest is after award) involved in or affected by the protest, that a protest has been filed with GAO and the basis for the protest. A written record of such notification shall be placed in the contract file. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of Procurement and Grant Policy will promptly furnish the same to the contracting officer. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to GAO. Copies of cover letters shall be sent to the Director, Office of Procurement and Grant Policy. Cover letters shall set forth a specified period of time for submission of comments (see FAR 33.104(a)(3)) and include instructions that any comments submitted to GAO should also be submitted simulaneously to the contracting officer and the Director, Office of Procurement and Grant Policy. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(b) *Submission of report.* (1) All personnel shall handle protests on a priority basis. Within 25 work days after receipt by the Office of Procurement and Grant Policy of GAO's telephonic notice of the protest, or within 10 work days after receipt from GAO of a determination to use the express option, a complete report shall be submitted to GAO (see FAR 33.104(a)(2)). If the specific circumstances of the protest require a longer period, the head of the contracting activity shall immediately notify the Office of Procurement and Grant policy which shall request, in writing, an extension of the time period in accordance with 4 CFR 21.3(d).

(2) In addition to the requirements of FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated; shall cite the GAO file number; and shall be signed by the contracting officer or the contracting officer's representative. Reports shall be prepared with the assistance of the Office of the Solicitor of Labor. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, a statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The head of the contracting activity shall submit an original and one copy of the contracting officer's report to the Director, Office of Procurement and Grant Policy, with a forwarding letter to GAO signed by the Assistant Secretary for Administration and Management. When the letter and report are dated and transmitted to GAO, the Director, Office of Procurement and Grant Policy, will inform the contracting officer. The contracting officer will then distribute copies of the report to all interested parties.

(c) *Notice to GAO.* The Assistant Secretary for Administration and Management shall submit the report required by FAR 33.104(f). The report shall be submitted to the Comptroller General through the Director, Office of Procurement and Grant Policy, and the Director, Directorate of Procurement and Grant Managemnent. For decisions concerning ADP acquisitions, the report shall also be submitted through the Director, Directorate of Information Resources Management.

2933.105 Protests to General Services Administration Board of Contract Appeals.

(a) *Notice of protest.* Immediately upon receipt of a copy of a protest to the General Services Administration Board of Contract Appeals (GSBCA), the contracting officer shall inform the Office of Procurement and Grant Policy, the Directorate of Information Resources Management, and the Office of the Solicitor of Labor. The contracting officer shall, within 1 work day after receipt of a copy of the protest, provide oral or written notice to all parties required to be notified by FAR 33.105(a)(2) and shall provide the GSBCA with a written list of all such parties to whom notice was provided within 5 work days after receipt of a copy of the protest. A copy of all notifications to interested parties and related correspondence with GSBCA shall be maintained in the contract file and a copy of the list of interested parties notified shall be provided to the Office of Procurement and Grant Policy simultaneously with submission to the GSBCA.

(b) *Submission of protest file.* An original and one copy of a protest file (see FAR 33.105(b)) plus one copy for each interested party which has a notice of intervention or a motion to intervene in accordance with the requirements of Rule 5(a)(3) of GSBCA Rules of Procedure (48 CFR 6101.5(a)(3)) shall be prepared by the contracting officer. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure (48 CFR 6101.4(b)). The contracting officer shall submit the file to the GSBCA within 10 work days after filing of the protest and shall also send copies to the Director, Office of Procurement and Grant Policy, and to each interested party.

(c) *Hearings.* The Solicitor of Labor, or the Solicitor's representative, is responsible for representing the contracting officer at all stages of proceedings on suspension of the agency's delegation of procurement authority (see FAR 33.105(d)), at all stages of proceedings on the merits of the protest (see FAR 33.105(e)), and with respect to any other proceedings which may be heard by the GSBCA. The head of the contracting activity shall be responsible for executing the determination required by FAR 33.105(d)(1). The Office of the Solicitor shall notify the contracting officer and the Directorate of Information Resources Management of the results of such proceedings, including any hearing.

Subpart 2933.2—Disputes and Appeals

SOURCE: 50 FR 8936, Mar. 5, 1985, unless otherwise noted. Redesignated at 51 FR 40375, Nov. 6, 1986, and 53 FR 3839, Feb. 9, 1988.

2933.203 Applicability.

(a) The Assistant Secretary for Administration and Management shall make the determination prescribed under FAR 33.203(b).

(b) Determinations under (a) above shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

[50 FR 8936, Mar. 5, 1985. Redesignated and amended at 51 FR 40375, Nov. 6, 1986; 53 FR 3839, Feb. 9, 1988]

2933.203-70 Department of Labor Board of Contract Appeals.

(a) The Department of Labor Board of Contract Appeals (LBCA) is authorized by the Secretary to consider and determine appeals from decisions of contracting officers arising under a contract or relating to a contract made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has designated the LBCA to decide the appeal.

(b) The address of the LBCA is 1111 20th Street, NW., Washington, DC 20036.

(c) The LBCA rules of procedure are contained in 41 CFR part 29-60.

2933.209 Suspected fraudulent claims.

The contracting officer shall refer all matters relating to suspected fraudulent claims by a contractor under the conditions in FAR 33.009 to the Office of the Inspector General for further action or investigation.

2933.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) shall include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Department of Labor Board of Contract Appeals (LBCA), 1111 20th Street, NW., Washington, DC 20036, and its procedures under 41 CFR part 29-60. The LBCA optional small claims (expedited) procedures and accelerated procedures under 41 CFR 29-60.211 shall also be referenced as required by FAR.

[50 FR 8936, Mar. 5 1985. Redesignated and amended at 51 FR 40375, Nov. 6, 1986; 53 FR 3839, Feb. 9, 1988]

2933.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to the LBCA by certified mail within five (5) days of receipt. The Solicitor of Labor shall also be notified of the appeal by the contracting officer. See 41 CFR 29-60.203.

(b) The contracting officer shall prepare and transmit the data, documentation, and information required by 41 CFR 29-60.205 in the form of an appeal file and appellant or appellants counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by the LBCA.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2935—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

2935.015 Contracts for research with educational institutions and nonprofit organizations.

(a) Heads of contracting activities shall furnish to the Director, Directorate of Procurement and Grant Management, copies of basic agreements pertaining to R&D with educational institutions and nonprofit organizations in accordance with 2916.702.

(b) The Director, Directorate of Procurement and Grant Management, shall furnish the list required under FAR 35.015(b)(3) to the FAR Secretariat.

[50 FR 8936, Mar. 5, 1985]

PART 2936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2936.2—Special Aspects of Contracting for Construction

Sec.
2936.201 Evaluation of contractor performance.
2936.202 Specifications.
2936.209 Construction contracts with architect-engineer firms.

Subpart 2936.5—Contract Clauses

2936.516 Quantity surveys.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.
2936.602-1 Selection criteria.
2936.602-2 Evaluation boards.
2936.602-3 Evaluation based functions.
2936.602-4 Selection authority.
2936.602-5 Short selection processes for contracts not to exceed $10,000.
2936.603 Collecting data on and appraising firms' qualifications.
2936.604 Performance evaluation.
2936.606 Negotiations.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8936, Mar. 5, 1985, unless otherwise noted.

Subpart 2936.2—Special Aspects of Contracting for Construction

2936.201 Evaluation of contractor performance.

(a) The Head of the Contracting Activity shall establish procedures to evaluate construction contractor performance and prepare performance reports as required by FAR 36.201. Normally, the performance report shall be prepared by the contracting officer's authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures shall prescribe instructions for review of the report, prior to distribution, as prescribed in FAR 36.201(b).

(b) Performance reports shall be made using Standard Form 1420, Performance Evaluation (Construction), as prescribed in FAR 36.701(e). Details concerning unsatisfactory performance including Government notification to the contractor as required by FAR 36.201(a)(3), and written comments by the contractor, shall also be included in the report.

(c) Performance reports shall be distributed to the Heads of Contracting Activities or designee for filing and other points required by DOL Agency/Office procedures. Copies of all reports shall also be promptly forwarded to the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for central filing. All reports shall be retained for six years after the date of the report by the Office of Procurement and Grant Policy.

(d) Before making a determination of prospective contractor responsibility, the contracting officer may contact the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for information regarding performance evaluation reports on file, unless other procedures are prescribed in DOL Agency/Office instructions.

2936.202 Specifications.

When "brand name or equal" product descriptions are necessary, the requirements of 2910.004-70 shall be followed.

2936.209 Construction contracts with architect-engineer firms.

(a) As required by FAR 36.209, no contract for construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates without the written approval of the Director, Directorate of Procurement and Grant Management.

(b) Requests for approval under paragraph (a) of this section, shall be made by the Head of the Contracting Activity, through the appropriate Office of the Solicitor, to the Director, Directorate of Procurement and Grant Management. The request shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

Subpart 2936.5—Contract Clauses

2936.516 Quantity surveys.

The Head of the Contracting Activity is authorized to make the determination regarding the impracticability of Government performance of original and final surveys as prescribed in FAR 36.516.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.

2936.602-1 Selection criteria.

Heads of contracting activities are authorized to approve the use of design competition under the conditions in FAR 36.602-1(b).

2936.602-2 Evaluation boards.

Heads of Contracting Activities shall establish procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602-2. DOL Agency/Office procedures shall provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the Head of the Contracting Activity to be essential to meet the Government's minimum needs.

2936.602-3 Evaluation based functions.

The selection report required in FAR 36.602-3(d) shall be prepared for the approval of the Head of the Contracting Activity.

2936.602-4 Selection authority.

The Head of the Contracting Activity is authorized to serve as the designated selection authority in accordance with FAR 36.602-4.

2936.602-5 Short selection processes for contracts not to exceed $10,000.

The selection process prescribed in FAR 36.602-5(b) shall be used for architect-engineer contracts not expected to exceed $10,000.

2936.603 Collecting data on and appraising firms' qualifications.

(a) Heads of Contracting Activities which acquire architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under (a) above shall be submitted to the Director, Directorate of Procurement and Grant Management, for review and approval. These procedures shall include a list of names, addresses, and telephone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually and submitted to the Director, Directorate of Procurement and Grant Management, no later than 30 days after the beginning of each fiscal year.

2936.604 Performance evaluation.

(a) The Head of the Contracting Activity shall establish procedures to evaluate architect-engineer contractor performance as required in FAR 36.604. Normally, the performance report shall be prepared by the contracting officer's authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures shall prescribe instructions for review of the report, prior to distribution, as prescribed in FAR 36.604(b).

(b) Performance reports shall be made using Standard Form 1421, Performance Evaluation (Architect-Engineer) as prescribed in FAR 36.702(c). Details covering unsatisfactory performance including Government notification to the contractor as required by FAR 36.604(a)(3) and written comments by the contractor shall also be included in the report.

(c) Performance reports shall be distributed to the Head of Contracting Activities for filing, distribution points in FAR 36.604(c), and other points required by DOL Agency/Office procedures. Copies of all reports shall also be promptly forwarded to the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for central filing. All reports shall be retained by the Office of Procurement and Grant Policy for six years after date of the report.

(d) Evaluation boards or contracting offices may contact the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for information regarding performance evaluation reports on file, unless other procedures are prescribed in DOL Agency/Office instructions.

2936.606 Negotiations.

When a proposal is solicited from an architect-engineer firm selected for negotiations, the contracting officer shall include in the request for proposals a reference to 2936.209 of this title as required by FAR 36.606(c).

PART 2937—SERVICE CONTRACTING

Subpart 2937.1—Service Contracts—General

Sec.
2937.103 Contracting officer responsibility.

Subpart 2937.2—Consulting Services

2937.205 Management controls.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8938, Mar. 5, 1985, unless otherwise noted.

Subpart 2937.1—Service Contracts—General

2937.103 Contracting officer responsibility.

Personal services contracts (see FAR 37.104) are not authorized.

Subpart 2937.2—Consulting Services

2937.205 Management controls.

(a) Heads of contracting activities having a requirement for consulting or related services by either contract or purchase order to be awarded without competition (regardless of dollar amount) and competitive actions ($50,000 or more) are required to prepare a written justification for such services. This written justification shall be submitted to the Procurement Review Board (PRB) at least 60 days prior to the proposed effective date of the contract. Generally, requests for such services will be scheduled for review by the PRB within 21 working days. Heads of Contracting Activities retain final approval authority for all competitive acquisitions under $50,000. However, a copy of the justification for competitive acquisitions under $50,000 must be forwarded to the Assistant Secretary for Administration and Management and the Inspector General within ten days of approval. Regardless of the type of action planned, the justification shall include the following:

(1) A statement of need which certifies that the requested services do not unnecessarily duplicate any previously performed work.

(2) Nature and scope of the problem, the results expected, and the manner

in which the project will relate to an impact on the Contracting Activity administration and/or program management.

(3) That the services described in the request are not prohibited by OMB Circular A-120.

(4) Extent to which in-house staff availability was assessed, and the reasons why procurement of outside services are necessary.

(5) Any additional information or data which support the requirement for a contract.

(6) Name(s) and title(s) of official(s) who will be assigned as project officer(s) to work with the contractor, and who can be contacted for additional information.

(b) In accordance with FAR 37.205(b)(7), all purchase requests for consulting services initiated in the fourth quarter of the fiscal year must be submitted to the Procurement Review Board for action and subsequent approval by the Assistant Secretary for Administration and Management.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2942—CONTRACT ADMINISTRATION

Subpart 2942.2—Assignment of Contract Administration

Sec.
2942.202 Assignment of contract administration.
2942.203 Retention of contract administration.

Subpart 2942.6—Corporate Administrative Contracting Officer

2942.602 Assignment and location.

Subpart 2942.7—Indirect Cost Rates

2942.703 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8938, Mar. 5, 1985, unless otherwise noted.

Subpart 2942.2—Assignment of Contract Administration

2942.202 Assignment of contract administration.

Unless otherwise prescribed in DOL Agency/Office procedures, the Head of the Contracting Activity is authorized to make the decision on withholding functions in FAR 42.202(b)(2).

2942.203 Retention of contract administration.

Unless otherwise prescribed in DOL Agency/Office procedures, the Head of the Contracting Activity is authorized to perform the review in FAR 42.203(b).

Subpart 2942.6—Corporate Administrative Contracting Officer

2942.602 Assignment and location.

The Head of the Contracting Activity is authorized to approve the need for a corporate administrative contracting officer as prescribed in FAR 42.602(a)(2).

Subpart 2942.7—Indirect Cost Rates

2942.703 Policy.

The Office of Cost Determination, Directorate of Procurement and Grant Management, is responsible for establishing billing rates and indirect cost rates as prescribed in FAR subpart 42.7.

PART 2943—CONTRACT MODIFICATIONS

Subpart 2943.2—Change Orders

Sec.
2943.205 Contract clauses.

Subpart 2943.3—Forms

2943.301 Use of forms.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2943.2—Change Orders

2943.205 Contract clauses.

Heads of Contracting Activities may establish procedures, when appropriate, for authorizing the contracting officer to vary the 30-day period for submission of adjustment proposals to the clauses prescribed by FAR 43.205 (a)(1), (b)(1), (c), and (d).

[50 FR 8938, Mar. 5, 1985]

Subpart 2943.3—Forms

2943.301 Use of forms.

FAR 43.301(a)(1)(vi) requires the use of Standard Form 30 (SF-30) to effect any obligation or deobligation of contract funds after award. The SF-30 also shall be used to deobligate funds when effecting contract closeout for a cost reimbursement contract when obligated funds exceed the final contract costs. In such an instance, the SF-30 may be issued as an administrative modification on a unilateral basis if the contractor's financial release has been separately obtained. The contracting officer shall include in any unilateral contract modification issued for contract close-out a statement that the contractor has signed a release of claims and indicate the date the release of claims was signed by the contractor.

[51 FR 40376, Nov. 6, 1986, as amended at 53 FR 3839, Feb. 9, 1988]

PART 2945—GOVERNMENT PROPERTY

Subpart 2945.3—Providing Government Property to Contractors

Sec.
2945.302 Providing facilities.
2945.302-1 Policy.

Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental—Use and Charges clause.
2945.405 Contracts with foreign governments or international organizations.
2945.407 Non-Government use of plant equipment.

Subpart 2945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2945.608 Screening of contractor inventory.
2945.608-6 Waiver of screening requirements.
2945.610 Sale of surplus contractor inventory.
2945.610-2 Exemptions from sale by GSA.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8938, Mar. 5, 1985, unless otherwise noted.

Subpart 2945.3—Providing Government Property to Contractors

2945.302 Providing facilities.

2945.302-1 Policy.

The Head of the Contracting Activity is authorized to make the determination for providing facilities to a contractor as prescribed in FAR 45.302-1(a)(4).

Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental—Use and Charges Clause.

The Head of the Contracting Activity is authorized to make the determination for changing rent on the basis of use under the clause at FAR 52.245-9 as prescribed in FAR 45.403(a).

2945.405 Contracts with foreign governments or international organizations.

The Head of the Contracting Activity shall establish procedures, when required, for processing requests of foreign governments or international organizations to use Government property and for recovering costs for such use (see FAR 45.405).

2945.407 Non-Government use of plant equipment.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve the non-Government use of plant equipment as prescribed in FAR 45.407.

(b) Requests for approval under (a) above shall be submitted by the Head of the Contracting Activity.

Subpart 2945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2945.608 Screening of contractor inventory.

2945.608-6 Waiver of screening requirements.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive screening requirements as prescribed in FAR 45.608-6.

(b) Requests for waiver shall be submitted by the Head of the Contracting Activity.

2945.610 Sale of surplus contractor inventory.

2945.610-2 Exemptions from sale by GSA.

(a) The Assistant Secretary for Administration and Management is authorized to seek exemptions from sale as prescribed in FAR 45.610-2.

(b) Requests for exemptions shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

PART 2948—VALUE ENGINEERING

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8939, Mar. 5, 1985, unless otherwise noted.

Subpart 2948.1—Policies and Procedures

2948.102 Policies.

(a) The Head of the Contracting Activity is authorized to make the determination to extend the sharing base of a value engineering change proposal (VECP) as prescribed in FAR 48.102(e).

(b) The Head of the Contracting activity is authorized to extend the sharing base of a VECP to include the entire contracting activity or any part of it (see FAR 48.102(e)).

(c) When the sharing base is extended under paragraph (a) or (b) of this section, the contracting officer shall specify the base in the contract schedule as required in FAR 48.104-1(a).

PART 2949—TERMINATION OF CONTRACTS

Subpart 2949.1—General Principles

Sec.
2949.106 Fraud or other criminal conduct.
2949.111 Review of proposed settlements.
2949.111-70 Settlement review boards.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Source: 50 FR 8939, Mar. 5, 1985, unless otherwise noted.

Subpart 2949.1—General Principles

2949.106 Fraud or other criminal conduct.

(a) Whenever fraud, such as falsified documents, false statements, or other criminal conduct related to the settlement of a terminated contract is suspected, the contracting officer shall discontinue negotiations and prepare a report of the facts. The report shall be submitted by the Head of the Contracting Activity to the Assistant Inspector General for Investigations along with copies of documents or other information connected with the suspected violation(s). A copy of the report shall also be submitted to the Director, Directorate of Procurement and Grant Management.

(b) Depending on the findings of the Assistant Inspector General for Investigations, the Head of the Contracting Activity may initiate suspension or debarment action as prescribed in FAR subpart 9.4 and subpart 2909.4.

2949.111 Review of proposed settlements.

All proposed settlement agreements shall be reviewed by the Office of the Solicitor and approved at a level higher than the contracting officer in accordance with DOL Agency procedures. Settlement agreements of $50,000 or more shall be approved by the Head of the Contracting Activity.

2949.111-70 Settlement review boards.

(a) Heads of Contracting Activities shall establish settlement review boards for the review of each termination settlement or determination of amount due under the termination clause of a contract or approval or ratification of a subcontract settlement when the action involves $50,000 or more.

(b) Settlement review boards may be established for actions below $50,000 when considered desirable by the Head of the Contracting Activity or when specifically requested by the contracting officer.

PART 2951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 2951.1—Contractor Use of Government Supply Sources

Sec.
2951.101 Policy.
2951.102 Authorization to use Government supply sources.
2951.102-70 Exclusive use on Government work.

Subpart 2951.2—Contractor Use of Interagency Motor Pool Vehicles

2951.201 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Source: 50 FR 8939, Mar. 5, 1985, unless otherwise noted.

Subpart 2951.1—Contractor Use of Government Supply Sources

2951.101 Policy.

It is DOL policy that cost-type contractors should meet their requirements from Government sources of supply when these sources are available to them, and if it is economically advantageous or otherwise in the best interest of the Government.

2951.102 Authorization to use Government supply sources.

(a) The Head of the Contracting Activity may authorize cost-type contractors and subcontractors, where all higher tier contracts and subcontracts are cost-type, to use Government supply sources in accordance with the requirements and procedures in FAR subpart 51. This authority may be redelegated to the level of contracting officer.

(b) If the contracting officer decides to authorize a contractor to use Government supply sources under the conditions prescribed in FAR 51.102, a written request for a FEDSTRIP activity address code (see FPMR 101-26.203) shall be made directly to the DOL Agency, Headquarters Property Management Office.

2951.102-70 Exclusive use on Government work.

Materials, supplies, and equipment acquired from Government sources of supply under the procedures described herein must be used exclusively in connection with Government work, except as otherwise authorized by the Head of the Contracting Activity.

Subpart 2951.2—Contractor Use of Interagency Motor Pool Vehicles

2951.201 Policy.

If it is in the Government's interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, as defined in FAR 51.201(a), interagency motor pool vehicles and related services for short-term use under Federal Supply Schedule Industrial Group 751.

SUBCHAPTER H—CLAUSE AND FORMS

PART 2952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

2952.000 Scope of part.

Subpart 2952.1—Instructions for Using Provisions and Clauses

2952.102-1 Incorporation by reference.
2952.170 Deviations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Source: 50 FR 8940, Mar. 5, 1985, unless otherwise noted.

2952.000 Scope of part.

This part implements FAR part 52 which sets forth contract clauses for use in connection with the acquisition of personal property and nonpersonal services (including construction).

Subpart 2952.1—Instructions for Using Provisions and Clauses

2952.102-1 Incorporation by reference.

(a) Preprinted standard general provisions sets will be maintained by the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, and distributed to DOL contracting activities for use during the initial FAR and DOLAR familiarization period. Contracting activities will be responsible for inserting necessary additions and alterations into individual contracts to ascertain that the general provisions are current and appropriate to the circumstances of the individual contract.

(b) At a later date, when the FAR general provisions are familiar to both DOL personnel and the Department's contractors, the general provisions will be incorporated by reference.

2952.170 Deviations.

(a) Individual or class deviations of provisions and clauses in FAR part 52 shall be authorized by the Director, Directorate of Procurement and Grant Management, as prescribed in Subpart 2901.4.

(b) Any FAR provision or clause used with a deviation authorized in accordance with (a) above shall be identified as prescribed in FAR 52.103.

PART 2953—FORMS

Sec.

2953.000 Scope of part.

Subpart 2953.1—General

2953.103 Exceptions.
2953.108 Recommendations concerning forms.
2953.170 Forms for collection of information.

Subpart 2953.2—Prescription of Forms

2953.200 Department of Labor forms.

Subpart 2953.3—Illustration of Forms

2953.300 Scope of subpart.
2953.303 Agency forms.
2953.303-DL 1-1 Department of Labor. Form DL 1-1, Requisition for Equipment, Supplies, or Services.
2953.303-DL 1-90 Department of Labor Form DL 1-90, Purchase Order.
2953.303-DL 1-194 Department of Labor Form DL 1-194, Certification Prior to Acquisition of Filing Equipment.
2953.303-DL 1-2004 Department of Labor Form DL 1-2004, Small Business Procurement Determination.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Source: 50 FR 8940, Mar. 5, 1985, unless otherwise noted.

2953.000 Scope of part.

This part (a) prescribes Department of Labor (DL) forms for use in acquisition, (b) illustrates these forms, and (c) contains procedures for exceptions to forms prescribed in FAR part 53 or this part 2953.

Subpart 2953.1—General

2953.103 Exceptions.

(a) Requests for exceptions to standard forms in FAR part 53 shall be submitted, as prescribed in FAR 53.103, to the Director, Directorate of Procurement and Grant Management, for further action.

(b) Requests for exceptions to Department of Labor (DL) forms in part

2953 shall be handled as deviations (see subpart 2901.4).

2953.108 Recommendations concerning forms.

Recommendations concerning forms (see FAR 53.108) shall be made as prescribed in 2901.304(e).

2953.170 Forms for collection of information.

In accordance with the Paperwork Reduction Act of 1980 and 5 CFR part 1320, DOL Agencies/Offices imposing forms under contracts or subcontracts requiring the collection of information on identical items from 10 or more members of the public must obtain approval from the Office of Management and Budget.

Subpart 2953.2—Prescription of Forms

2953.200 Department of Labor forms.

This subpart prescribes Department of Labor (DL) forms for use in acquisition. Consistent with the approach used in FAR subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DOLAR in which the form usage requirements are addressed.

Subpart 2953.3—Illustrations of Forms

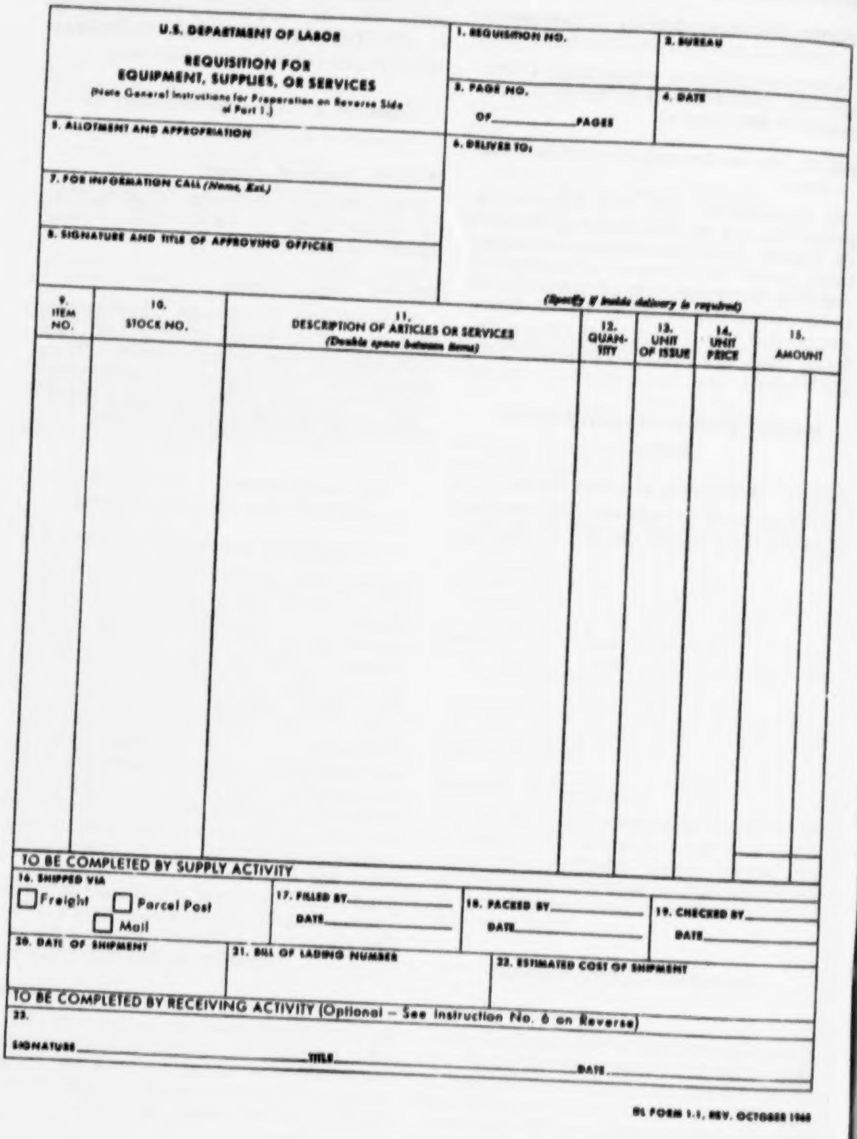
2953.300 Scope of subpart.

This subpart contains illustrations of Department of Labor (DL) forms used in acquisition.

2953.303 Agency forms.

This section illustrates Department of Labor (DL) forms specified by the DOLAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DL form numbers.

2953.303-DL 1-1 Department of Labor Form DL 1-1, Requisition for Equipment, Supplies, or Services.



U.S. DEPARTMENT OF LABOR

REQUISITION FOR
EQUIPMENT, SUPPLIES, OR SERVICES
(Note General Instructions for Preparation on Reverse Side of Part 1.)

1. REQUISITION NO.

2. BUREAU

3. PAGE NO. OF________PAGES

4. DATE

5. ALLOTMENT AND APPROPRIATION

6. DELIVER TO:

(Specify if inside delivery is required)

7. FOR INFORMATION CALL *(Name, Ext.)*

8. SIGNATURE AND TITLE OF APPROVING OFFICER

9. ITEM NO.	10. STOCK NO.	11. DESCRIPTION OF ARTICLES OR SERVICES *(Double space between items)*	12. QUANTITY	13. UNIT OF ISSUE	14. UNIT PRICE	15. AMOUNT

TO BE COMPLETED BY SUPPLY ACTIVITY

16. SHIPPED VIA ☐ Freight ☐ Parcel Post ☐ Mail

17. FILLED BY________ DATE________

18. PACKED BY________ DATE________

19. CHECKED BY________ DATE________

20. DATE OF SHIPMENT

21. BILL OF LADING NUMBER

22. ESTIMATED COST OF SHIPMENT

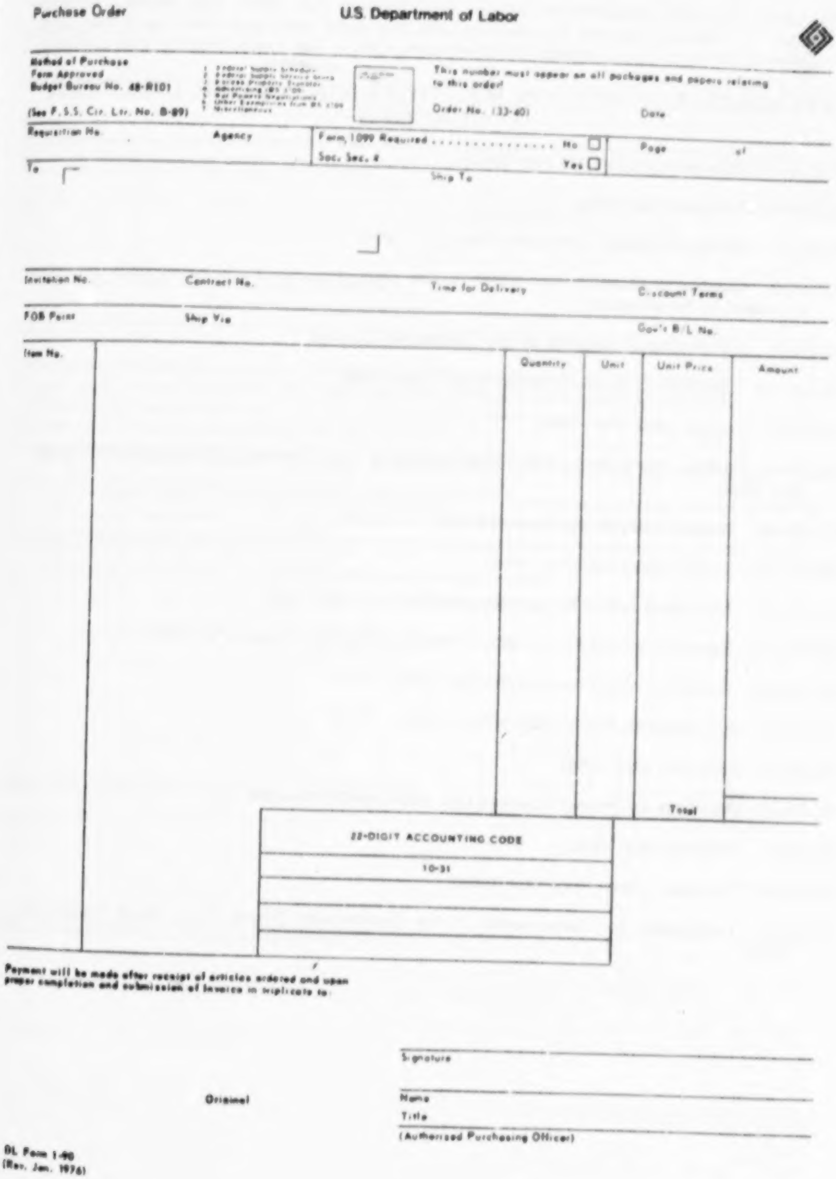
TO BE COMPLETED BY RECEIVING ACTIVITY (Optional – See Instruction No. 6 on Reverse)

23.

SIGNATURE________ TITLE________ DATE________

DL FORM 1-1, REV. OCTOBER 1966

2953.303–DL 1–90 Department of Labor Form DL 1–90, Purchase Order.



Purchase Order

U.S. Department of Labor

Method of Purchase
Form Approved
Budget Bureau No. 48-R101

(See F.S.S. Cir. Ltr. No. B-89)

1 Federal Supply Schedule
2 Federal Supply Service Store
3 Excess Property Transfer
4 Advertising (RS 3709)
5 Neg. Powers Negotiations
6 Other Exemptions from RS 3709
7 Miscellaneous

This number must appear on all packages and papers relating to this order!

Order No. (33-40)

Date

Requisition No.

Agency

Form 1099 Required . . . . No ☐ Yes ☐

Soc. Sec. #

Page of

To

Ship To

Invitation No.

Contract No.

Time for Delivery

Discount Terms

FOB Point

Ship Via

Gov't B/L No.

Item No.		Quantity	Unit	Unit Price	Amount
				Total	

22-DIGIT ACCOUNTING CODE
10-31

Payment will be made after receipt of articles ordered and upon proper completion and submission of Invoice in triplicate to:

Signature

Original

Name

Title

(Authorized Purchasing Officer)

DL Form 1-90
(Rev. Jan. 1976)

PURCHASE ORDER TERMS AND CONDITIONS

152.252-2 CLAUSES INCORPORATED BY REFERENCE (Apr 1984). This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request the Contracting Officer will make their full text available:

FEDERAL AQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

52.203-1 Officials Not to Benefit (Apr 1984)

52.203-3 Gratuities (Apr 1984)

52.203-4 Covenant Against Contingent Fees (Apr 1984)

52.212-9 Variation in Quantity (Apr 1984) (In the preceding clause the permissible variations are stated in the schedule)

52.215-1 Examination of Records by the Comptroller General

52.219-13 Utilization of Women-Owned Small Businesses

52.222-3 Convict Labor (Apr 1984)

52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Apr 1984)

52.222-20 Walsh-Healey Public Contracts Act

52.222-26 Equal Opportunity (Apr 1984)

52.222-36 Affirmative Action for Handicapped Workers (Apr 1984)

52.222-40 Service Contract Act of 1965-Contracts of $2,500 or Less (Apr 1984)

52.222-41 Service Contract Act of 1965 (Apr 1984)

52.225-3 Buy American Act—Supplies (Apr 1984)

52.232-1 Payments (Apr 1984)

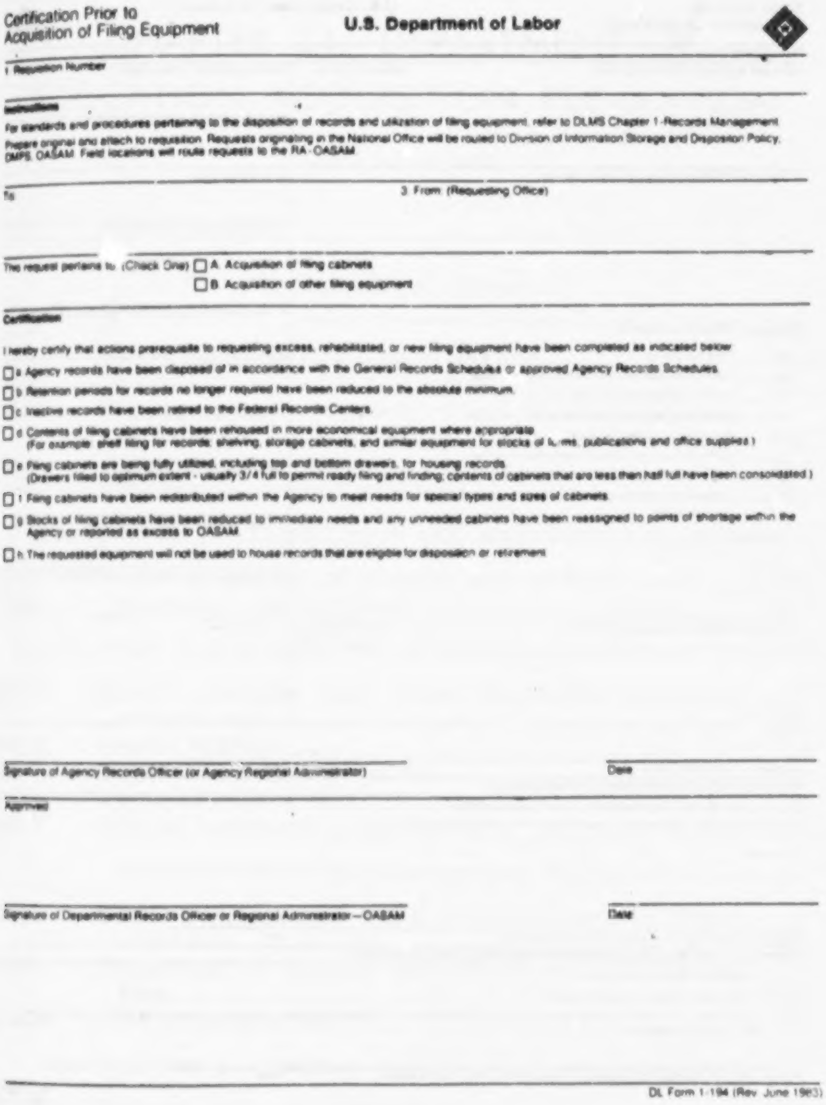
52.232-8 Discounts for Prompt Payment (Apr 1984) (With Alternate 1)

52.233-1 Disputes (Apr 1984)

52.243-1 Changes—Fixed Price (Apr 1984)

52.249-1 Termination for Convenience of the Government (Fixed Price) Short Form) (Apr 1984)

2953.303-DL 1-194 Department of Labor Form DL 1-194, Certification Prior to Acquisition of Filing Equipment.



Certification Prior to
Acquisition of Filing Equipment

U.S. Department of Labor

1 Requisition Number

Instructions

For standards and procedures pertaining to the disposition of records and utilization of filing equipment, refer to DLMS Chapter 1-Records Management.

Prepare original and attach to requisition. Requests originating in the National Office will be routed to Division of Information Storage and Disposition Policy, DMPS, OASAM. Field locations will route requests to the RA-OASAM.

To

3. From: (Requesting Office)

The request pertains to: (Check One) ☐ A. Acquisition of filing cabinets
☐ B. Acquisition of other filing equipment

Certification

I hereby certify that actions prerequisite to requesting excess, rehabilitated, or new filing equipment have been completed as indicated below.

- ☐ a. Agency records have been disposed of in accordance with the General Records Schedules or approved Agency Records Schedules.
- ☐ b. Retention periods for records no longer required have been reduced to the absolute minimum.
- ☐ c. Inactive records have been retired to the Federal Records Centers.
- ☐ d. Contents of filing cabinets have been rehoused in more economical equipment where appropriate. (For example: shelf filing for records; shelving, storage cabinets, and similar equipment for stocks of forms, publications and office supplies.)
- ☐ e. Filing cabinets are being fully utilized, including top and bottom drawers, for housing records. (Drawers filled to optimum extent - usually 3/4 full to permit ready filing and finding; contents of cabinets that are less than half full have been consolidated.)
- ☐ f. Filing cabinets have been redistributed within the Agency to meet needs for special types and sizes of cabinets.
- ☐ g. Stocks of filing cabinets have been reduced to immediate needs and any unneeded cabinets have been reassigned to points of shortage within the Agency or reported as excess to OASAM.
- ☐ h. The requested equipment will not be used to house records that are eligible for disposition or retirement.

Signature of Agency Records Officer (or Agency Regional Administrator)

Date

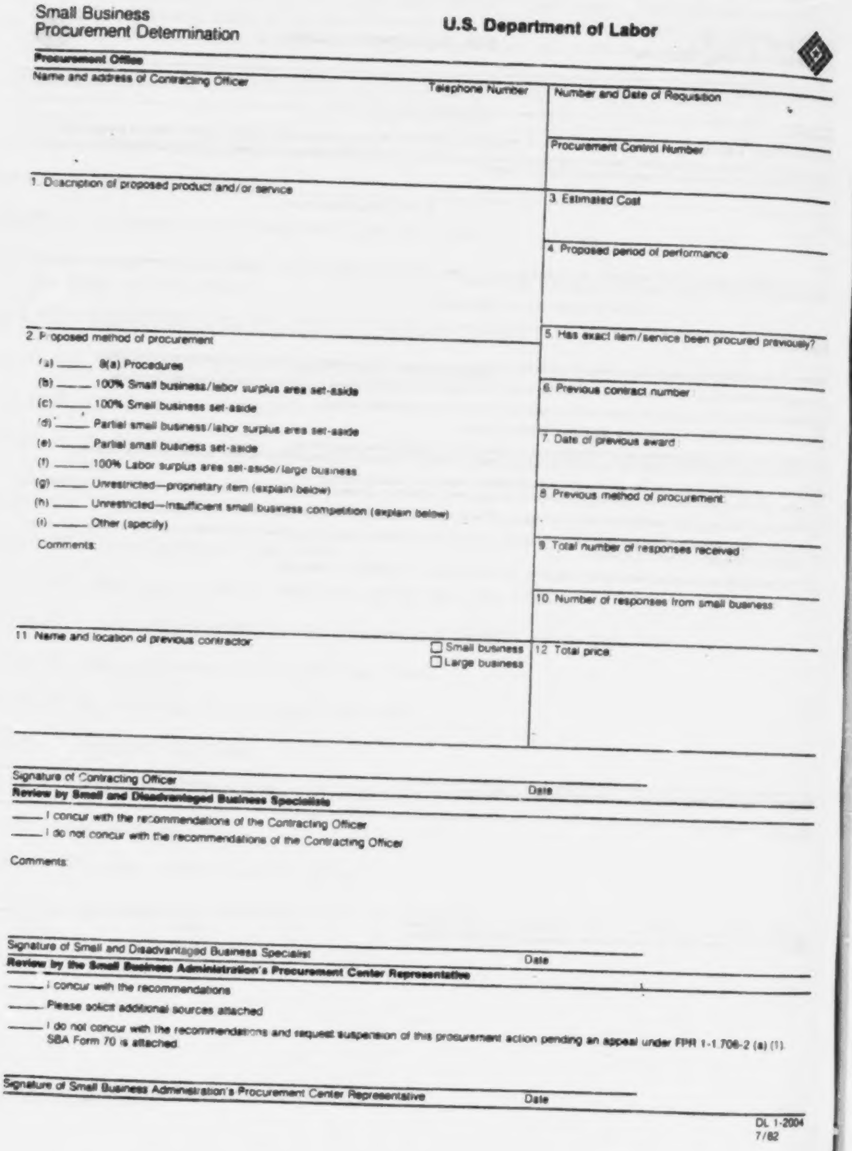
Approved

Signature of Departmental Records Officer or Regional Administrator—OASAM

Date

DL Form 1-194 (Rev. June 1983)

2953.303-DL 1-2004 Department of Labor Form DL 1-2004, Small Business Procurement Determination.



Small Business
Procurement Determination

U.S. Department of Labor

Procurement Office

Name and address of Contracting Officer

Telephone Number

Number and Date of Requisition

Procurement Control Number

1. Description of proposed product and/or service

3. Estimated Cost

4. Proposed period of performance

2. Proposed method of procurement

(a) _____ 8(a) Procedures
(b) _____ 100% Small business/labor surplus area set-aside
(c) _____ 100% Small business set-aside
(d) _____ Partial small business/labor surplus area set-aside
(e) _____ Partial small business set-aside
(f) _____ 100% Labor surplus area set-aside/large business
(g) _____ Unrestricted—proprietary item (explain below)
(h) _____ Unrestricted—insufficient small business competition (explain below)
(i) _____ Other (specify)

Comments:

5. Has exact item/service been procured previously?

6. Previous contract number

7. Date of previous award

8. Previous method of procurement

9. Total number of responses received

10. Number of responses from small business

11. Name and location of previous contractor

☐ Small business
☐ Large business

12. Total price

Signature of Contracting Officer Date

Review by Small and Disadvantaged Business Specialists

_____ I concur with the recommendations of the Contracting Officer
_____ I do not concur with the recommendations of the Contracting Officer

Comments:

Signature of Small and Disadvantaged Business Specialist Date

Review by the Small Business Administration's Procurement Center Representative

_____ I concur with the recommendations
_____ Please solicit additional sources attached
_____ I do not concur with the recommendations and request suspension of this procurement action pending an appeal under FPR 1-1.706-2 (a) (1). SBA Form 70 is attached.

Signature of Small Business Administration's Procurement Center Representative Date

DL 1-2004
7/82

CHAPTER 34—DEPARTMENT OF EDUCATION ACQUISITION REGULATION

(Parts 3401 to 3499)

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SUBCHAPTER A—GENERAL

PART 3401—ED ACQUISITION REGULATION SYSTEM

Sec.
3401.000 Scope of part.

Subpart 3401.1—Purpose, Authority, Issuance

3401.103 Applicability.
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3401.104-3 Copies.

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3401.304 Agency control and compliance procedures.

Subpart 3401.4—Deviations

3401.401 Definition.
3401.403 Individual deviations.
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Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.
3401.501-2 Opportunity for public comments.

Subpart 3401.6—Contracting Authority and Responsibilities

3401.601 General.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19119, May 26, 1988, unless otherwise noted.

3401.000 Scope of part.

The Federal Acquisition Regulation System brings together, in title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Government. This part establishes a system of Department of Education (ED) acquisition regulations, referred to as the EDAR, for the codification and publication of policies and procedures of ED which implement and supplement the Federal Acquisition Regulation (FAR).

Subpart 3401.1—Purpose, Authority, Issuance

3401.103 Applicability.

The FAR and the EDAR apply to all acquisitions as defined in FAR part 2 except where expressly excluded.

3401.104 Issuance.

3401.104-2 Arrangement of regulations.

The regulations in this chapter may be referred to as the Department of Education Acquisition Regulation or the EDAR. References to the EDAR are made in the same manner as references to the FAR (See FAR 1.104-2(c)).

3401.104-3 Copies.

Copies of the EDAR in the FEDERAL REGISTER and Code of Federal Regulations (CFR) form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

Subpart 3401.3—Agency Acquisition Regulations

3401.304 Agency control and compliance procedures.

The EDAR is subject to the same review procedures within the Department as other regulations of the Department.

Subpart 3401.4—Deviations

3401.401 Definition.

A deviation from the EDAR has the same meaning as a deviation from the FAR.

3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Head of the Contracting Activity (HCA).

3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Procurement Executive.

Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.

3401.501-2 Opportunity for public comments.

Unless the Secretary of Education (Secretary) approves an exception, the Department issues the EDAR, including any amendments to the EDAR, in accordance with the procedures for public participation in 5 U.S.C. 553.

Subpart 3401.6—Contracting Authority and Responsibilities

3401.601 General.

Contracting authority vests with the Secretary. The Secretary has delegated this authority to the Deputy Under Secretary for Management who has delegated this authority, with the right to redelegate, to the Procurement Executive and the HCA.

PART 3402—DEFINITIONS OF WORDS AND TERMS

Subpart 3402.1—Definitions

Sec.
3402.101 Definitions.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19119, May 26, 1988, unless otherwise noted.

Subpart 3402.1—Definitions

3402.101 Definitions.

As used in this chapter—

Head of the Contracting Activity or *HCA* means the Director, Grants and Contracts Service (GCS), Office of Management of the Department of Education.

Procurement Executive means the Comptroller, Office of Management of the Department of Education.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

The contracting officer shall insert the clause in 3452.202-1, Definitions, in all solicitations and contracts in lieu of the clause in FAR 52.202-1, except—

(a) A fixed-price research and development contract that is expected to be $2,500 or less; or

(b) A purchase order.

PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 3403.1—Safeguards

Sec.
3403.101 Standards of conduct.
3403.101-3 Agency regulations.

Subpart 3403.2—Contractor Gratuities To Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

Subpart 3403.4—Contingent Fees

3403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 3403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c)

SOURCE: 53 FR 19120, May 26, 1988, unless otherwise noted.

Subpart 3403.1—Safeguards

3403.101 Standards of conduct.

3403.101-3 Agency regulations.

ED regulations on standards of conduct are in 34 CFR part 73.

Subpart 3403.2—Contractor Gratuities to Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause must be reported to the HCA in writing detailing the circumstances.

(b) The HCA evaluates the report with the assistance of the Designated Agency Ethics Officer. If the HCA determines that a violation may have occurred, the HCA refers the report to the Procurement Executive for disposition.

Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

(a) [Reserved]

(b) Any Departmental personnel who have evidence of a suspected antitrust violation in an acquisition shall—

(1) Report that evidence through the HCA to the Office of the General Counsel for referral to the Attorney General; and

(2) Provide a copy of that evidence to the Procurement Executive.

Subpart 3403.4—Contingent Fees

3403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Any Departmental personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees, shall report the matter promptly in accordance with the procedures in 3403.203.

Subpart 3403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

Exceptions under FAR 3.602 must be approved by the Deputy Under Secretary for Management.

PART 3404—ADMINISTRATIVE MATTERS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19120, May 26, 1988, unless otherwise noted.

Subpart 3404.1—Contract Execution

3404.170 Ratification of unauthorized contract awards.

The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers acting in excess of the limits of their delegated authority, may be later ratified by the Department. To be effective, a ratification must be—

(a) A written document clearly stating that ratification of a previously unauthorized act is intended; and

(b) Signed by the HCA, or higher level official of the Department, who could have granted authority to enter into the commitment at the time it was made and still has the power to do so.

PART 3405—PUBLICIZING CONTRACT ACTIONS

Subpart 3405.2—Synopses of Proposed Contract Actions

Sec.
3405.270 Notices to perform market surveys.

Subpart 3405.5—Paid Advertisements

3405.502 Authority.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19120, May 26, 1988, unless otherwise noted.

Subpart 3405.2—Synopses of Proposed Contract Actions

3405.270 Notices to perform market surveys.

(a) If a sole-source contract is anticipated, the issuance of a notice of a proposed contract action that is detailed enough to permit submission of meaningful responses and subsequent evaluation of the responses by the

Government, constitutes an acceptable market survey.

(b) The notice must include—

(1) A clear statement of the supplies or services to be procured;

(2) Any capabilities or experience required of a contractor and any other factors relevant to those requirements; and

(3) The criteria, including relative weights, to be used in the evaluation of responses.

Subpart 3405.5—Paid Advertisements

3405.502 Authority.

Authority to approve publication of paid advertisements in newspapers is delegated to the HCA.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 53 FR 19120, May 26, 1988, unless otherwise noted.

Subpart 3408.8—Acquisition of Printing and Related Supplies

3408.870 Printing clause.

The contracting officer shall insert the clause in 3452.208-70, Printing, in all solicitations and contracts other than purchase orders.

PART 3409—CONTRACTOR QUALIFICATIONS

Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.403 Definitions.
3409.406 Debarment.
3409.406-3 Procedures.

Subpart 3409.5—Organizational Conflicts of Interest

3409.502 Applicability.
3409.503 Waiver.
3409.507 Procedures.
3409.570 Offeror certification provision.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19120, May 26, 1988, unless otherwise noted.

Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.403 Definitions.

The Procurement Executive is designated as the "debarring official" and the "suspension official" as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405-1, 9.405-2, 9.406-1(c), and 9.407-1(d).

3409.406 Debarment.

3409.406-3 Procedures.

The debarring official may enter into a settlement with a contractor under which the contractor voluntarily excludes itself from, or restricts its participation in, Government contracting and subcontracting for a specified period.

Subpart 3409.5—Organizational Conflicts of Interest

3409.502 Applicability.

This subpart applies to all ED contracts except contracts with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

3409.503 Waiver.

The HCA is designated as the official who may waive any general rule or procedure of FAR subpart 9.5 or of this subpart.

3409.507 Procedures.

(a) If the effects of a potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the prospective contractor is not eligible for that award. If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized, or mitigated, ED terminates the contract.

(b) The Procurement Executive is designated as the official to conduct reviews and make final decisions under FAR 9.507(c)(4).

3409.570 Offeror certification provision.

The contracting officer shall insert the provision in 3452.209-70, Organizational Conflict of Interest, in all solicitations.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 3413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19121, May 26, 1988, unless otherwise noted.

Subpart 3413.1—General

3413.107 Solicitation and evaluation of quotations.

(a)—(c) [Reserved]

(d) *Information provided by ED.* If ED provides information to a potential quoter concerning a request for quotations, that information must also be provided to all other potential quoters, by amending the request, if—

(1) The information is necessary to quoters in submitting quotations; or

(2) The lack of the information would be otherwise prejudicial to other potential quoters.

(e) *Late quotations.* The procedures in FAR 15.412 must be used for quotations received after the time specified for receipt at the contracting activity, except that late quotations may be accepted if the contracting officer determines in writing prior to the award that it is in the best interest of the Government to do so.

PART 3414—SEALED BIDDING

Subpart 3414.4—Opening of Bids and Award of Contract

Sec.
3414.406 Mistakes in bids.
3414.406-3 Other mistakes disclosed before award.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19121, May 26, 1988, unless otherwise noted.

Subpart 3414.4—Opening of Bids and Award of Contract

3414.406 Mistakes in bids.

3414.406-3 Other mistakes disclosed before award.

(a)—(d) [Reserved]

(e) Authority is delegated to the HCA to make determinations under FAR 14.406-3 (a) through (d).

PART 3415—CONTRACTING BY NEGOTIATION

Subpart 3415.4—Solicitation and Receipt of Proposals and Quotations

Sec.
3415.406-3 Part II—Contract clauses.
3415.407 Solicitation provisions.
3415.413-2 Alternate II.

Subpart 3415.5—Unsolicited Proposals

3415.505 Content of unsolicited proposals.
3415.506 Agency procedures.

Subpart 3415.9—Profit

3415.902 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19121, May 26, 1988, unless otherwise noted.

Subpart 3415.4—Solicitation and Receipt of Proposals and Quotations

3415.406-3 Part II—Contract clauses.

The contracting officer shall insert the clause in 3452.215-33, Order of Precedence, in all contracts other than purchase orders. The contracting officer shall use this clause in lieu of the clause in FAR 52.215-33.

3415.407 Solicitation provisions.

(a) The Freedom of Information Act (FOIA), 5 U.S.C. 552, may require ED to release data contained in an offeror's proposal even if the offeror has identified the data as restricted in accordance with the provision in FAR 52.215-12. The solicitation provision in

3452.215-70, Release of Restricted Data, informs offerors that ED is required to consider release of restricted data under FOIA and Executive Order 12600.

(b) The contracting officer shall insert the provision in 3452.215-70, in all solicitations that include a reference to FAR 52.215-12, Restriction on Disclosure and Use of Data.

3415.413-2 Alternate II.

The Department uses the Alternate II procedures in FAR 15.413-2.

Subpart 3415.5—Unsolicited Proposals

3415.505 Content of unsolicited proposals.

(a)—(c) [Reserved]

(d) Each unsolicited proposal must contain the following certification:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Education has been within the limits of appropriate advance guidance set forth in FAR 15.504.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: ______________________________

Organization: ______________________

Name: _____________________________

Title: ______________________________

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization)

3415.506 Agency procedures.

(a) [Reserved]

(b)(1) The HCA is the contact point to coordinate the receipt and handling of unsolicited proposals.

(2) Offerors shall direct unsolicited proposals to the HCA.

Subpart 3415.9—Profit

3415.902 Policy.

(a) [Reserved]

(b) The contracting officer shall establish the profit or fee portion of the Government prenegotiation objective in accordance with 48 CFR chapter 3, part 315, subpart 315.9 (Department of Health and Human Services Acquisition Regulation).

PART 3416—TYPES OF CONTRACTS

Subpart 3416.3—Cost-Reimbursement Contracts

Sec.
3416.303 Cost-sharing contracts.
3416.307 Contract clauses.

Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3416.603 Letter contracts.
3416.603-3 Limitations.

Subpart 3416.7—Agreements

3416.701 Contract clause.
3416.702 Basic agreements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19121, May 26, 1988, unless otherwise noted.

Subpart 3416.3—Cost-Reimbursement Contracts

3416.303 Cost-sharing contracts.

(a) [Reserved]

(b) *Application.* Costs that are not reimbursed under a cost-sharing contract may not be charged to the Government under any other grant, contract, cooperative agreement, or other arrangement.

3416.307 Contract clauses.

(a) If the clause in FAR 52.216-7, Allowable cost and Payment, is used in a contract with a hospital, the contracting officer shall modify the clause by deleting the words "subpart 31.2 of the Federal Acquisition Regulation (FAR)" from paragraph (a) and substituting "34 CFR part 74, appendix E."

(b) The contracting officer shall insert the clause in 3452.216-70, Additional Cost Principles, in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutional, hospitals, or organizations listed in Attachment C to Office of Management and Budget Circular A-122.

Subpart 3416.6—Time-and Materials, Labor-Hour and Letter Contracts

3416.603 Letter contracts.

3416.603-3 Limitations.

If the HCA is to sign a letter contract as the contracting officer, the Procurement Executive executes the written determination under FAR 16.603-3.

Subpart 3416.7—Agreements

3416.701 Contract clause.

The contracting officer shall insert the clause in 3452.216-71, Negotiated Overhead Rates—Fixed, in contracts with organizations that have fixed indirect cost rates with carryforward adjustments approved by the Government agency responsible for negotiating the organization's indirect cost rates.

3416.702 Basic agreements.

(a)–(d) [Reserved]

(e) *Negotiated overhead rates.* Basic agreements may include negotiated overhead rates for cost-reimbursement contracts. If a negotiated overhead rate is included, the bases to which the rate applies and the period of applicability must also be stated. All pertinent provisions such as final rates for past periods, provisional rates for current or future periods, ceilings, and any specific items to be treated as indirect costs must also be included.

PART 3417—SPECIAL CONTRACTING METHODS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19122, May 26, 1988, unless otherwise noted.

Subpart 3417.2—Options

3417.207 Exercise of options.

If any provision in a contract requires that an option may only be exercised within a specified time after funds become available, the same provision must specify that the date on which funds are available means the date funds become available to the contracting officer for obligation.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 3419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 3419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

3419.705 Responsibilities of the contracting officer under the subcontracting assistance program.
3419.705-2 Determining the need for a subcontracting plan.
3419.708 Solicitation provisions and contract clauses.

Subpart 3419.8—Contracting With the Small Business Administration (The 8(a) Program)

3419.801 General.
3419.870 Acquisition of technical requirements.

AUTHORITY: 5 U.S.C.; 40 U.S.C. 486(c).

SOURCE: 53 FR 19122, May 26, 1988, unless otherwise noted.

Subpart 3419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

3419.705 Responsibilities of the contracting officer under the subcontracting assistance program.

3419.705-2 Determining the need for a subcontracting plan.

Incremental funding actions must be included in determining whether an acquisition meets the dollar threshold requiring a subcontracting plan.

3419.708 Solicitation provisions and contract clauses.

(a) [Reserved]

(b) If the clause "Small Business and Small Disadvantaged Business Subcontracting Plan" (see FAR 52.219-9) must be used in a solicitation, a notification must be included in the solicitation that advises prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range.

Subpart 3419.8—Contracting With the Small Business Administration (The 8(a) Program)

3419.801 General.

The signing of a contract document by the Small Business Administration (SBA) may be accepted by the contracting officer as the certification under FAR 19.801(b)(1).

3419.870 Acquisition of technical requirements.

(a) *Source selection.* (1) Except where SBA selects a concern for an award under section 8(a) or under the circumstances in paragraph (a)(5) of this section, ED selects a nominee for an 8(a) award by SBA through a limited technical competition if technical aspects, methodology, or approach are of primary importance rather than price.

(2) If limited technical competition is used, the concerns to be included are decided by the contracting officer in consultation with OSDBU and the Contracting Officer's Technical Representative (COTR).

(3) (i) ED may require the concerns participating in the limited technical competition to submit written technical proposals. Otherwise, ED holds oral discussions with the participating concerns.

(ii) In a limited technical competition, cost factors may not be included in the technical proposals nor considered during technical discussions of the proposals.

(4) ED evaluates the concerns participating in a limited technical competition based on the written technical proposals or oral discussions. ED nominates, to SBA for subcontract award, the concern that the contracting officer determines to have the best technical capability to perform the contract requirements.

(5) Instead of selecting a nominee through limited technical competition, ED may nominate one 8(a) concern to SBA if that concern has exclusive or predominant capability among 8(a) concerns by reason of experience, spe-

cialized facilities, or technical competence to perform the work within the time required.

(6) Each concern nominated for a specific 8(a) requirement must be approved by OSDBU or SBA for that particular requirement before the contracting officer initiates negotiation of 8(a) award terms with the concern.

(b) *Negotiation of 8(a) award.* The contracting officer shall give all possible assistance required by SBA with respect to SBA's negotiation of an 8(a) award.

(c) *Delegated 8(a) award administration.* If SBA delegates responsibility to ED for administration of the 8(a) award, ED informs SBA of all 8(a) award modifications, progress payments, problems experienced by the subcontractor, and other pertinent matters requested by SBA.

PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 3424.1—Protection of Individual Privacy

Sec.
3424.103 Procedures.

Subpart 3424.2—Freedom of Information Act

3424.201 Authority.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19123, May 26, 1988, unless otherwise noted.

Subpart 3424.1—Protection of Individual Privacy

3424.103 Procedures.

(a) If the Privacy Act of 1974 applies to a contract, the contracting officer shall specify in the contract the disposition to be made of the system or systems of records upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to ED, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(b) If a notice of the system of records has not been published in the FEDERAL REGISTER, the contracting officer may proceed with the acquisition but shall not award the contract until the notice is published, unless the contracting officer determines, in writing, that portions of the contract may proceed without maintaining information subject to the Privacy Act. In this case, the contracting officer may—

(1) Award the contract, authorizing performance only of those portions not subject to the Privacy Act; and

(2) After the notice is published and effective, authorize performance of the remainder of the contract.

Subpart 3424.2—Freedom of Information Act

3424.201 Authority.

The Department's regulations implementing the Freedom of Informaiton Act, 5 U.S.C. 552, are in 34 CFR part 5.

PART 3425—FOREIGN ACQUISITION

Subpart 3425.1—Buy American Act—Supplies

Sec.
3425.102 Policy.

Subpart 3425.3—Balance of Payments Program

3425.302 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19123, May 26, 1988, unless otherwise noted.

Subpart 3425.1—Buy American Act—Supplies

3425.102 Policy.

(a) [Reserved]

(b) The HCA approves determinations under FAR 25.120(a)(4).

Subpart 3425.3—Balance of Payments Program

3425.302 Policy.

The HCA is designated to make all determinations under FAR 25.302. This authority may not be redelegated.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 3427—PATENTS, DATA, AND COPYRIGHTS

Subpart 3427.4—Rights in Data and Copyrights

Sec.

3427.470 Publication and publicity clause.
3427.471 Paperwork Reduction Act clause.
3427.472 Advertising of awards clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19123, May 26, 1988, unless otherwise noted.

Subpart 3427.4—Rights in Data and Copyrights

3427.470 Publication and publicity clause.

The contracting officer shall insert the clause in 3452.227-70, Publication and Publicity, in all solicitations and contracts other than purchase orders.

3424.471 Paperwork Reduction Act clause.

The contracting officer shall insert the clause in 3452.227-71, Paperwork Reduction Act, in all solicitations and contracts.

3427.472 Advertising of awards clause.

The contracting officer shall insert the clause in 3452.227-72, Advertising of Awards, in all solicitations and contracts other than purchase orders.

PART 3428—BONDS AND INSURANCE

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19123, May 26, 1988, unless otherwise noted.

Subpart 3428.3—Insurance

3428.370 Contract clause.

The contracting officer shall insert the clause in 3452.228-70, Required Insurance, in all solicitations and resultant cost-reimbursement contracts.

PART 3432—CONTRACT FINANCING

Subpart 3432.1—General

Sec.

3432.170 Method of payment.

Subpart 3432.4—Advance Payments

3432.402 General.
3432.407 Interest.

Subpart 3432.7—Contract Funding

3432.704 Limitation of cost or funds.
3432.770 Prohibition against the use of ED funds to influence legislation or appropriations.
3432.771 Provision for incremental funding.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(C).

SOURCE: 53 FR 19123, May 26, 1988, unless otherwise noted.

Subpart 3432.1—General

3432.170 Method of payment.

The contracting officer shall insert the clause in 3452.232-72, Method of Payment, in all solicitations and contracts.

Subpart 3432.4—Advance Payments

3432.402 General.

(a)—(d) [Reserved]

(e) The HCA is designated to make determinations under FAR 32.402(c)(1)(iii)(A). This authority may not be redelegated.

3432.407 Interest.

The HCA is designated to authorize advance payments without interest under FAR 32.407(d).

Subpart 3432.7—Contract Funding

3432.704 Limitation of cost or funds.

(a) Under the circumstances in FAR 32.704(a)(1), the contractor shall submit the following information in writing to the contracting officer:

(1) Name and address of the contractor.

(2) Contract number and expiration date.

(3) Contract items and amounts that will exceed the estimated cost of the contract or the limit of the funds allotted.

(4) The elements of cost that changed from the original estimate (for example: labor, material, travel, overhead), furnished in the following format:

(i) Original estimate.

(ii) Costs incurred to date.

(iii) Estimated cost to completion.

(iv) Revised estimate.

(v) Amount of adjustment.

(5) The factors responsible for the increase, such as error in estimate or changed conditions.

(6) The latest date by which funds must be available to the contractor to avoid delays in performance, work stoppage, or other impairments.

(b) A fixed fee provided in a contract may not be changed if a cost overrun is funded. Changes in a fixed fee may be made only to reflect changes in the scope of work that justify an increase or decrease in the fee.

3432.770 Prohibition against the use of ED funds to influence legislation or appropriations.

The contracting officer shall insert the clause at 3452.232-70, Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations, in contracts with educational institutions, hospitals, and State and local governments. Contracts with commercial and nonprofit organizations shall be subject to the legislative lobbying prohibitions contained in FAR 31.205-22 and Office of Management and Budget Circular A-122, respectively.

3432.771 Provision for incremental funding.

The contracting officer shall insert the provision in 3452.232-71, Incremental Funding, in a solicitation if a cost-reimbursement contract using incremental funding is contemplated.

PART 3433—PROTESTS, DISPUTES, AND APPEALS

Subpart 3433.1—Protests

Sec.

3433.101 Definitions.
3433.103 Protests to the agency.

Subpart 3433.2—Disputes and Appeals

3433.203 Applicability.
3433.212 Contracting officer's duties upon appeal.
3433.214 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19124, May 26, 1988, unless otherwise noted.

Subpart 3433.1—Protests

3433.101 Definitions.

Filed, as used in this subpart, means that a document has been received by the contracting officer, the General Accounting Office (GAO), or the General Services Administration Board of Contract Appeals (GSBCA).

3433.103 Protests to the agency.

(a)(1) Protests to ED based on alleged improprieties in any type of solicitation that are apparent before bid opening or the closing date for receipt of proposals, must be filed before bid opening or the closing date for receipt of proposals. In the case of negotiated acquisitions, protests based on alleged improprieties that do not exist in the initial solicitation, but that are added later, must be filed not later than the next closing date for receipt of proposals following the addition. In other cases, protests to ED must be filed not later than ten (10) Federal Government working days after a basis for protest is known or should have been known, whichever is earlier.

(b) With the concurrence of the HCA, the contracting officer is authorized to make a determination, using the criteria in FAR 33.103(a), to award a contract before resolution of a protest.

Subpart 3433.2—Disputes and Appeals

3433.203 Applicability.

The General Services Administration Board of Contract Appeals (GSBCA) is designated to hear any appeal from a final decision of a contracting officer issued pursuant to the "Disputes" clause in a contract. The rules and regulations of the GSBCA are in 48 CFR chapter 5, appendix B, and govern the processing of these appeals.

3433.212 Contracting officer's duties upon appeal.

The Office of the General Counsel is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the GSBCA.

3433.214 Contract clause.

The contracting officer shall use the clause in FAR 52.233-1, Disputes, with its Alternate I.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 3437—SERVICE CONTRACTING

Subpart 3437.1—Service Contracts—General

Sec.
3437.102 Policy.

Subpart 3437.2—Consulting Services

3437.270 Consulting services reporting clauses.
3437.271 Services of consultants clauses.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19124, May 26, 1988, unless otherwise noted.

Subpart 3437.1—Service Contracts—General

3437.102 Policy.

If a service contract requires one or more end items of supply, FAR subpart 37.1 and this subpart apply only to the required services.

Subpart 3437.2—Consulting Services

3437.270 Consulting services reporting clause.

The contracting officer shall include the clause in 3452.237-70, Identification of Reports Under Consulting Services Contracts, in all solicitations and contracts for consulting services.

3437.271 Services of consultants clause.

The contracting officer shall insert the clause in 3452.237-71, Services of Consultants, in all solicitations and resultant cost-reimbursement contracts.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 3442—CONTRACT ADMINISTRATION

Subpart 3442.7—Indirect Cost Rates

Sec.
3442.705 Final indirect cost rates.

Subpart 3442.70—Contract Monitoring

3442.7001 Withholding of contract payments clause.
3442.7002 Litigation and claims clause.
3442.7003 Delays clause.

Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19124, May 26, 1988, unless otherwise noted.

Subpart 3442.7—Indirect Cost Rates

3442.705 Final indirect cost rates.

The Chief, Cost Determination Branch, Grants and Contracts Service, is delegated the authority to establish final indirect cost rates under FAR 42.705-1 and 42.705-2.

Subpart 3442.70—Contract Monitoring

3442.7001 Withholding of contract payments clause.

(a) The contracting officer shall insert the clause in 3452.242-72, Withholding of Contract Payments, in all solicitations and contracts other than purchase orders.

(b) ED may withhold contract payments if any report required to be submitted by the contractor is overdue, or if the contractor fails to perform or deliver work or services as required by the contract.

(c) The contracting officer shall notify the contractor in writing that payments are being withheld in accordance with the clause.

3442.7002 Litigation and claims clause.

The contracting officer shall insert the clause in 3452.242-70, Litigation and Claims, in all solicitations and resultant cost-reimbursement contracts.

3442.7003 Delays clause.

The contracting officer shall insert the clause in 3452.242-71, Notice to the Government of Delays, in all solicitations and contracts other than purchase orders.

Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

(a) It is the policy of ED that all meetings, conferences, and seminars be accessible to persons with disabilities.

(b) The contracting officer shall insert the clause in 3452.242-73, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in all solicitations and contracts.

PART 3443—CONTRACT MODIFICATIONS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

3443.106 Contract clause.

The contracting officer shall insert the clause in 3452.243-70, Key Personnel, in all solicitations and resultant cost-reimbursement contracts.

[53 FR 19125, May 26, 1988]

PART 3445—GOVERNMENT PROPERTY

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19125, May 26, 1988, unless otherwise noted.

Subpart 3445.4—Contractor Use and Rental of Government Property

3445.405 Contracts with foreign governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use ED production and research property must be approved by the HCA. The HCA shall determine the amount of cost to be recovered or rental charged, if any, based on the facts and circumstances of each case.

PART 3447—TRANSPORTATION

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19125, May 26, 1988, unless otherwise noted.

Subpart 3447.70—Foreign Travel

3447.7000 Foreign travel clause.

The contracting officer shall insert the clause in 3452.247-70, Foreign Travel, in all solicitations and resultant cost-reimbursement contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 3452.2—Texts of Provisions and Clauses

Sec.
3452.202-1 Definitions.
3452.208-70 Printing.
3452.209-70 Organization conflict of interest.
3452.215-33 Order of precedence.
3452.215-70 Release of restricted data.
3452.216-70 Additional cost principles.
3452.216-71 Negotiated overhead rates—fixed.
3452.227-70 Publication and publicity.
3452.227-71 Paperwork Reduction Act.
3452.227-72 Advertising of awards.
3452.228-70 Required insurance.
3452.232-70 Prohibition against the use of ED funds to influence legislation or appropriations.
3452.232-71 Incremental funding.
3452.232-72 Method of payment.
3452.237-70 Identification of reports under consulting services contracts.
3452.237-71 Services of consultants.
3452.242-70 Litigation and claims.
3452.242-71 Notice to the Government of delays.
3452.242-72 Withholding of contract payments.
3452.242-73 Accessibility of meetings, conferences, and seminars to persons with disabilities.
3452.243-70 Key personnel.
3452.247-70 Foreign travel.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Source: 53 FR 19125, May 26, 1988, unless otherwise noted.

Subpart 3452.2—Texts of Provisions and Clauses

3452.202-1 Definitions.

As prescribed in 3402.201, insert the following clause in solicitations and contracts:

Definitions (Aug 1987)

(a) The term *Secretary* or *Head of the Agency* (also called *Agency Head*) means the Secretary or Under Secretary of the Department of Education; and the term *his/her duly authorized representative* means any person, persons, or board authorized to act for these officials.

(b) The term *contracting officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

(c) The term *Contracting Officer's Technical Representative* means the person representing the Government for the purpose of technical monitoring of contract performance. The Contracting Officer's Technical Representative (COTR) is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost or price of this contract or a change in the delivery dates or performance period of this contract.

(d) The term *Department* or *ED* means the Department of Education.

(e) Except as otherwise provided in this contract, the term *subcontract* includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

3452.208-70 Printing.

As prescribed in 3408.870, insert the following clause in all solicitations and contracts other than purchase orders:

Printing (Aug 1987)

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, and printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except that performance involving the reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, shall not be deemed to be printing. A production unit is defined as one sheet, size 8½ by 11 inches, and one side and color only.

(End of clause)

3452.209-70 Organizational conflict of interest.

As prescribed in 3409.570, insert the following provision in all certifications:

ORGANIZATIONAL CONFLICT OF INTEREST (OCT 1987)

The offeror certifies that it (_) is (_) is not aware of any potential organization conflict of interest that it may have under this procurement. If the offeror is aware of any potential conflict of interest, the offeror shall submit a disclosure statement fully describing the situation. An organizational conflict of interest is as defined and illustrated in FAR 9.5.

(End of provision)

3452.215-33 Order of precedence.

As prescribed in 3415.406-3, insert the following clause in contracts:

ORDER OF PRECEDENCE (AUG 1987)

Any inconsistency in this contract shall be resolved by giving precednece in the following order:

(a) The Schedule (exclusing the work statement or specification).

(b) The contract clauses (Section I).

(c) Any incorporated documents, exhibits, or attachment, excluding the work statement or specifications and the contractor's proposal, representations, and certifications,

(d) The work statement or specifications, and

(e) The contractor's proposal, as amended, including representations and certifications.

(End of clause)

3452.215-70 Release of restricted data.

As prescribed in 3415.407, insert the following provision in solicitations:

RELEASE OF RESTRICTED DATA (AUG 1987)

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215-12, Restriction on Disclosure and Use of Data, the Government may be required to release certain data contained in the proposal in response to a request for the data under the Freedom of Information Act. the Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under the Freedom of Information Act. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold nor deny access to data requested pursuant to the Act and that the Government's FOI officials shall make that determination;

(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to the Act; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any propose, including the release of the information pursuant to requests under the Act.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with (1) a restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.515-12, *Restriction on Disclosure and Use of Data*, or (2) a statement taking exceptions to the terms of (a) or (b) of this provision.

(End of provision)

3452.216-70 Additional cost principles.

Insert the following clause in solicitations and contracts as prescribed in 3416.307(b):

ADDITIONAL COST PRINCIPLES (AUG 1987)

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost and other data needed to support the bids, proposals and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basic as the allocation of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of clause)

3452.216-71 Negotiated overhead rates—fixed.

Insert the following clause in cost-reimbursement contracts as prescribed in 3416.701:

NEGOTIATED OVERHEAD RATES—FIXED (AUG 1987)

(a) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties, as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. If the appiciation of the negotiated fixed rates(s) against the actual bases during a given fiscal period produces an amount greater or less than the indirect costs determined for that period, the greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The contractor, as soon as possible but no later than six months after the close of its fiscal year, or such other period as may be specified in the contract, shall submit to the contracting officer or the duly authorized representative, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carry-forward adjustments, if any, by the contractor and the contracting officer, or the duly authorized representative, shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the contracting officer, subject to appropriate adjustment when the final rates for the fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed rate or rates or to the amount of any carry-forward adjustment under this clause shall not be considered a dispute for decision by the contracting officer within the meaning of the Disputes clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates, in accordance with the terms of the Allowable Cost and Payment clause, in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the contracting officer or the duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the contractor and the contracting officer or the duly authorized representative, as evidenced by negotiated overhead rate agreements signed by both parties, shall satisfy the requirements of paragraphs (b), (c), (d), and (e) of this clause.

(End of clause)

3452.227-70 Publication and publicity.

As prescribed in 3427.470, insert the following clause in all solicitations and contracts other than purchase orders:

PUBLICATION AND PUBLICITY (AUG 1987)

(a) Unless otherwise specified in this contract, the contractor is encouraged to publish and otherwise promote the results of its work under this contract. A copy of each article or work submitted by the contractor for publication shall be promptly sent to the Contracting Officer's Technical Representative. The contractor shall also inform the representative when the article or work is published and furnish a copy in the published form.

(b) The contractor shall acknowledge the support of the Department of Education in publicizing the work under this contract in any medium. This acknowledgment shall read substantially as follows:

"This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number ________. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

(End of clause)

3452.227-71 Paperwork Reduction Act.

As prescribed in 3427.471, insert the following clause in all solicitations and contracts:

PAPERWORK REDUCTION ACT (AUG 1987)

(a) The Paperwork Reduction Act of 1980 (Pub. L. 96-511) applies to contractors that collect information for use or disclosure by the Federal Government.

If the contractor will collect information requiring answers to identical questions from 10 or more people then no plan, questionnaire, interview guide, or other similar device for collecting information may be used without first obtaining clearance from the Deputy Under Secretary for Management (DUSM) or his/her delegate within the Department of Education (ED) and the Office of Management and Budget (OMB). Contractors and Contracting Officers' Technical Representatives shall be guided by the provisions of 5 CFR part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the Department's Paperwork Clearance Officer to determine the procedures for acquiring DUSM and OMB clearance.

(b) The contractor shall obtain the required DUSM and OMB clearance through the Contracting Officer's Technical Representative before expending any funds or making public contacts for the collection of information described in (a) above. The authority to expend funds and proceed with the collection shall be in writing by the contracting officer. The contractor must plan at least 120 days for DUSM and OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

3452.227-72 Advertising of awards.

As prescribed in 3427.472, insert the following clause in all solicitations and contracts other than purchase orders:

ADVERTISING OF AWARDS (AUG 1987)

The contractor agrees not to refer to awards issued by the Department of Education in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed by the Federal Government or is necessarily considered by the Government to be superior to other products or services.

(End of clause)

3452.228-70 Required insurance.

As prescribed in 3428.370, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

REQUIRED INSURANCE (AUG 1987)

(a) The contractor shall procure and maintain such insurance as required by law or regulation, including but not limited to the requirements of FAR subpart 28.3 or by the written direction of the contracting officer. Prior written approval of the contracting officer shall be required with respect to any insurance policy the premiums for which the contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government property.

(End of clause)

3452.232-70 Prohibition against the use of ED funds to influence legislation or appropriations.

The following clause is to be used in accordance with 3432.770:

PROHIBITION AGAINST THE USE OF ED FUNDS TO INFLUENCE LEGISLATION OR APPROPRIATIONS (APR 1987)

No part of any funds under this contract shall be used to pay the salary and expenses of any contractor, or agency acting for the contractor, to engage in any activity designed to influence legislation or appropriations pending before the Congress.

(End of clause)

3452.232-71 Incremental funding.

As prescribed in 3452.771, insert the following provision in solicitations:

INCREMENTAL FUNDING (AUG 1987)

(a) Sufficient funds are not presently available to cover the total cost of the complete project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause titled "Limitation of Funds" in

FAR 52.232-22. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for cost incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Cost clause in FAR 52.232-20 shall supersede the Limitation of Funds clause in the event the contract becomes fully funded.

(End of provision)

3452.232-72 Method of payment.

As prescribed in 3432.170, insert the following clause in all solicitations and contracts:

METHOD OF PAYMENT (AUG 1987)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The contractor shall forward the following information in writing to (designated payment party) not later than seven days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) to whom check payments are to be sent, and who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution:

(ii) Receiving financial institution's nine-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide the address and telegraphic abbreviation of that institution and its nine-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to (designated payment office) in writing at least 30 days before the effective date of the change. It is the contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the contractor's official authorized to provide it, as well as the contractor's name and contract number.

(End of clause)

3452.237-70 Identification of reports under consulting services contracts.

As prescribed in 3437.270, insert the following clause in all solicitations and contracts for consulting services:

IDENTIFICATION OF REPORTS UNDER CONSULTING SERVICE CONTRACTS (AUG 1987)

The contractor shall set forth on the cover of every report submitted pursuant to this contract the following information:

(a) Name and business address of the contractor; (b) contract number; (c) contract dollar amount; (d) whether the contract was competitively or noncompetitively awarded; (e) name of the Contracting Officer's Technical Representative and complete office identification and address; and (f) names of the managerial and professional personnel responsible for the content and preparation of the report.

(End of clause)

3452.237-71 Services of consultants.

As prescribed in 3437.271, insert the following clause in all solicitations and resultant cost-reimbursement contracts.

SERVICES OF CONSULTANTS (AUG 1987)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts," the prior written approval of the contracting officer shall be required:

(a) If any employee of the contractor is to be paid as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $150, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.

If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by consultant to others for performing consultant services of a similar nature.

(End of clause)

3452.242-70 Litigation and claims.

As prescribed in 3442.7002, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

LITIGATION AND CLAIMS (AUG 1987)

(a) The contractor shall give the contracting officer immediate notice in writing of:

(1) Any action, filed against the contractor arising out of the performance of this contract, including any proceeding before any administrative agency or court of law, and also including, but not limited to, the performance of any subcontract hereunder; and

(2) Any claim against the contractor for a cost which is allowable under the clause entitled "Allowable Cost and Payment."

(b) Except as otherwise directed by the contracting officer, the contractor shall immediately furnish the contracting officer copies of all pertinent papers received under that action or claim.

(c) If required by the contracting officer, the contractor shall:

(1) Effect an assignment and subrogation in favor of the Government of all the contractor's rights and claim (except those against the Government) arising out of the action or claim against the contractor; and

(2) Authorize the Government to settle or defend the action or claim and to represent the contractor in, or to take charge of, the action.

(d) If the settlement or defense of an action or claim is undertaken by the Government, the contractor shall furnish all reasonable required assistance. However, if an action against the contractor is not covered by a policy of insurance, the contractor shall notify the contracting officer and proceed with the defense of the action in good faith.

(e) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the contracting officer's approval, settle any such action or claim.

(f)(1) The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the contractor would have been compensated by insurance that was required by law, regulation, contract clause, or other written direction of the contracting officer, but which the contractor failed to secure through its own fault or negligence.

(2) In any event, unless otherwise expressly provided in this contract, the contractor shall not be reimbursed or indemnified by the Government for any cost or expense of liability that the contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may arise from the performance of this contract.

(End of clause)

3452.242-71 Notice of the Government of delays.

As prescribed in 3442.7003, insert the following clause in all solicitations and contracts other than purchase orders:

NOTICE TO THE GOVERNMENT OF DELAYS (AUG 1987)

Whenever the contractor has knowledge that any actual or potential situation, including but not limited to labor disputes, is delaying or threatens to delay the timely performance of work under this contract, the contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the contracting officer.

(End of clause)

3452.242-72 Withholding of contract payments.

As prescribed in 3442.7001, insert the following clause in all solicitations and contacts other than purchase orders:

WITHHOLDING OF CONTRACT PAYMENTS (AUG 1987)

Notwithstanding any other payment provisions of this contract, failure of the contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, or failure to meet any of the requirements of the contract, will result in the withholding of payments under this contract in such amounts as the contracting officer deems appropriate, unless the failure arises out of causes beyond the control, and without the fault of negligence, of the contractor, as defined by the clause entitled "Excusable Delays" or "Default", as applicable. The Government shall promptly notify the contractor of its intention to withhold payment of any invoice or voucher submitted. Payment will be withheld until the failure is cured, a new delivery schedule is agreed upon, or payment is made as part of a termination settlement.

(End of clause)

3452.242-73 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 3442.7101(b), insert the following clause in all solicitations and contracts:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (AUG 1987)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

3452.243-70 Key personnel.

As prescribed in 3443.106(b), insert the following clause in all solicitations and resultant cost-reimbursement contracts:

KEY PERSONNEL (AUG 1987)

The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified personnel, the contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the contractor without the written consent of the contracting officer; *provided*, that the contracting officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the contracting officer required by this clause. The contract shall be modified to reflect that addition or deletion personnel.

(End of clause)

3452.247-70 Foreign travel.

As prescribed in 3447.7000, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

FOREIGN TRAVEL (AUG 1987)

Foreign travel shall not be undertaken without the prior written approval of the contracting officer. As used in this clause, "foreign travel" means travel outside the fifty States comprising the United States, the District of Columbia, and Canada.

(End of clause)

CHAPTER 35—PANAMA CANAL COMMISSION

(Parts 3501 to 3599)

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SUBCHAPTER A—GENERAL

PART 3501—FEDERAL ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7635, Mar. 2, 1990, unless otherwise noted.

3501.000 Scope of part.

This part sets forth basic policies and general information about the Panama Canal Commission Acquisition Regulation, referred to as the PAR, and its relationship to the Federal Acquisition Regulation, referred to as the FAR.

Subpart 3501.1—Purpose, Authority, Issuance

3501.101 Purpose.

(a) The Federal Acquisition Regulations System brings together, in title 48 of the Code of Federal Regulations (CFR), the acquisition regulations of all executive agencies of the United States Government. This subpart establishes the PAR as chapter 35 of title 48, CFR. The FAR, which is the primary document for all agencies within this system, is issued as chapter 1 of title 48, CFR.

(b) The purpose of the PAR is to implement the FAR where further implementation is needed and to supplement the FAR when coverage is needed for subject matter not contained in the FAR. The PAR is not, by itself, a complete regulation. It must be used in conjunction with, and is subordinate to, the FAR.

3501.102 Authority.

The PAR and amendments thereto are issued by the Administrator of the Panama Canal Commission (Commission) pursuant to the authority of section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), as amended, and other applicable law.

3501.103 Applicability.

The FAR and the PAR apply to all acquisitions of the Commission, except where expressly excluded.

3501.104 Issuance.

3501.104-1 Publication and code arrangement.

(a) The PAR is published in—

(1) The FEDERAL REGISTER;

(2) Cumulated form at 48 CFR Chapter 35; and

(3) A separate loose-leaf form.

3501.104-2 Arrangement of regulations.

(a) *General.* The PAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself, there will be no corresponding PAR coverage.

(b) *Numbering.* (1) Where the PAR implements the FAR, the implementing part, subpart, section or subsection of the PAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 35 or a 350 such that there will always be four numbers to the left of the decimal. For example, the PAR implementation of FAR 1.104-1 is shown as 3501.104-1 and the PAR implementation of FAR subpart 24.1 is shown as subpart 3524.1. Similarly, individual paragraphs at the section and subsection levels of the PAR correspond, to the extent feasible, to the FAR paragraph designations that are being implemented.

(2) Material which supplements the FAR as new parts, subparts, sections, or subsections will be assigned the numbers 70 and up. For example, there is no FAR coverage on the preferential acquisition of supplies and services obtainable in the Republic of Panama as provided for in Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977. This supplementary material is identified as part 3570.

(3) Because the PAR implements the FAR only where further implementation is necessary, there are gaps in the PAR numbering and paragraphing sequence. For example, the PAR skips from part 3510 to part 3513, from subpart 3501.4 to subpart 3501.6, and from section 3501.301 to section 3501.303 because the FAR coverage at parts 11 and 12, subpart 1.5, and section 1.302, respectively, does not require further implementation. Similarly, section 3501.405 of the PAR begins at paragraph (d) because paragraphs (a), (b), and (c) at FAR 1.405 do not require further implementation.

(c) *References and citations.* (2) This regulation may be referred to as the Panama Canal Commission Acquisition Regulation or the PAR. References to PAR material outside this regulation may be cited in informal documents as PAR followed by the identifying number. For example, this subparagraph would be informally cited as PAR 3501.104-2(c)(2). In formal documents outside this regulation, such as legal briefs, references to PAR material should include reference to Title 48 of the Code of Federal Regulations. For example, this subparagraph would be formally cited as 48 CFR 3501.104-2(c)(2).

(3) References to FAR or PAR material within this regulation will be made as follows:

(i) FAR parts or subparts will be referred to in those terms followed by the identifying number—for example, FAR part 1; FAR subpart 1.1. FAR subdivisions below the subpart level (i.e., sections, subsections, paragraphs, subparagraphs, or subdivisions) will simply state FAR followed by the identifying number—for example, FAR 1.104-2(c)(3)(i).

(ii) PAR parts or subparts will be referred to only as part or subpart followed by the identifying number—for example, part 1; subpart 1.1. PAR subdivisions below the subpart level will simply indicate the identifying number—for example, this subdivision would be cited as 3501.104-2(c)(3)(ii).

3501.104-3 Copies.

Copies of the PAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of the loose-leaf PAR are distributed within the Panama Canal Commission and may be obtained from the Administrative Services Division, Records Management Branch, telephone (507) 52-7642.

3501.105 OMB approval under the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in the PAR have been approved by the Office of Management and Budget

(OMB) in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511). OMB control number 3207-0007 is assigned to the following PAR sections:

PAR Sections

3513.107(a)(4)(i)
3513.107(a)(4)(ii)
3513.107(a)(4)(iii)
3513.107(a)(4)(iv)
3515.804-6
3536.571

Subpart 3501.2—Administration

3501.201 Maintenance of the FAR.

3501.201-1 The two councils.

(e)(2) The Commission's Procurement Executive, in consultation with the General Counsel, is responsible for overseeing the development of the agency position on proposed revisions to the FAR and responding to the FAR Secretariat when such action is appropriate.

Subpart 3501.3—Agency Acquisition Regulations

3501.301 Policy.

(a)(1) The Procurement Executive, in consultation with the General Counsel and such other agency officials as may be appropriate, is responsible for the development, preparation, and maintenance of PAR issuances by the Administrator. In addition, the Procurement Executive is authorized to issue internal policies, procedures, instructions, and guidelines to clarify or implement the FAR or PAR within the Commission. Such internal issuances are subject to review by the General Counsel.

(2) Heads of contracting activities and division chiefs are authorized to issue internal guidance of the type described in FAR 1.301(a)(2).

(b) Public participation in the promulgation of the PAR shall be in the same manner as specified for the FAR in FAR subpart 1.5. Where solicitation of public comment on significant revisions is impracticable prior to promulgation, the revisions may be set forth in temporary regulations. Comments will be solicited on the temporary regulations and considered prior to formulating the final regulations.

3501.303 Publication and codification.

(a) The PAR is codified as Chapter 35 in Title 48, Code of Federal Regulations.

(c) The PAR replaces the former part 87—Procurement, of the Panama Canal Administration and Regulations (PCAR), in its entirety.

3501.304 Agency control and compliance procedures.

(a) Whenever contracting activities and organizational components thereof wish to propose for publication in the FEDERAL REGISTER an agency acquisition regulation that they consider necessary to implement or supplement the FAR or PAR, they must prepare a memorandum that explains the need, background, justification, and significant aspects of the proposed regulation and send it to the Procurement Executive. The Procurement Executive and General Counsel will (1) review the proposed regulation to assure compliance with FAR part 1, and (2) either approve or disapprove it. If approved, the Procurement Executive will prepare the proposed regulation in FEDERAL REGISTER format for issuance by the Administrator.

Subpart 3501.4—Deviations from the FAR and PAR

3501.401 Definition.

A deviation from the PAR is defined in the same manner as a deviation from the FAR (see FAR 1.401).

3501.403 Individual deviations.

Requests for individual deviations from the FAR and the PAR shall be submitted by the Head of the Contracting Activity (HCA) through the General Counsel to the Procurement Executive for approval. Requests submitted shall cite the specific part of the FAR or PAR from which it is desired to deviate, shall set forth the nature of the deviation(s), and shall give the reasons for the action requested. The Procurement Executive shall transmit copies of approved individual FAR deviations to the FAR Secretariat.

3501.404 Class deviations.

Requests for class deviations to the PAR shall be submitted in advance by the HCA through the General Counsel to the Procurement Executive for processing in accordance with FAR 1.404 and this section. Requests submitted shall include the same type of information as required for individual deviations as prescribed in 3501.403. The Procurement Executive may approve class deviations to the FAR and the PAR and shall transmit copies of approved class FAR deviations to the FAR Secretariat as required by FAR 1.404.

3501.405 Deviations pertaining to treaties and executive agreements.

(d) The Procurement Executive is designated as the central control point within the Commission for transmittal of deviations from the FAR required to comply with treaties and executive agreements to which the United States is a party. Copies of the text of any deviation authorized in accordance with FAR 1.405 (b) or (c) shall be forwarded by the HCA to the Procurement Executive through the General Counsel for further transmittal to the FAR Secretariat.

(e) When a deviation required to comply with a treaty or executive agreement is inconsistent with FAR coverage based on law, the Procurement Executive shall forward a request for deviation to the FAR Secretariat for processing as required by FAR 1.405(e).

Subpart 3501.6—Contracting Authority and Responsibilities

3501.601 General.

(a) Commission contracting activities are established within the General Services Bureau for the acquisition of supplies and services, and the Engineering and Construction Bureau for the acquisition of construction, including architect-engineer services and other services related to construction. The Directors of these bureaus are designated by the Administrator as Heads of Contracting Activities and are the officials who have the authority and responsibility to appoint contracting officers to contract for authorized supplies and services, including construction and architect-engineer services, that fall within the scope of their respective contracting activities.

(b) In addition, bureau directors and heads of independent units are delegated contracting authority, not to exceed amounts established by the General Services Director, for the decentralized procurement of supplies and services on Division Purchase Orders (see 3513.505-71). This authority is granted to assist Commission activities in expediting minor purchases. Such authority may be redelegated pursuant to 3513.505-71(b)(1)(ii).

3501.602 Contracting Officers.

3501.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

Responsible contracting officer, as used in 3501.602-370, means the individual at the appropriate level of contracting authority who can execute any contractual document that may be required to formalize an unauthorized commitment. Depending on the circumstances, the term can apply to the existing contracting officer, the prospective contracting officer (when a purchase order or contract does not exist) or, in the case of a contracting officer who acted in excess of the limits of his delegated authority, the next individual in the chain of contracting authority who has the appropriate authority to execute the necessary contractual document.

(b) *Policy.* (1) Unauthorized commitments do not legally obligate the Commission for the expenditure of funds. If an unauthorized commitment would have been valid had it been authorized by a contracting officer acting within the limits of his delegated authority, then the unauthorized commitment may be ratified in accordance with the procedures prescribed in 3501.602-370. If an unauthorized commitment is otherwise improper, it cannot be ratified and the Commission must deny legal liability, in which case the individual who made the unauthorized commitment may be personally liable for such action.

(2) The cognizant Head of the Contracting Activity (HCA) is the ratification official for the approval of unauthorized commitments and the Procurement Executive is the reviewing official for such approvals. The HCA may ratify an unauthorized commitment only if:

(i) The conditions in FAR 1.602-3(c) are applicable, and

(ii) The Procurement Executive concurs with the proposed ratification.

3501.602-370 Procedures.

These procedures apply to all unauthorized commitments, whether written or oral and without regard to dollar value. Unauthorized commitments (other than claims to be processed in accordance with FAR subpart 33.2) shall be processed as follows:

(a) Whenever it is discovered that any person is performing or has performed work as a result of an unauthorized commitment, that person shall be advised by the cognizant contracting office that such work is being or was performed at that person's own risk pending establishment of valid contractual coverage.

(b) The individual who made the unauthorized commitment shall furnish to the responsible contracting officer all records and documents concerning the commitment and a complete, written statement of the facts including, but not limited to, a description of the work or product ordered; why the work or product was necessary to and for the benefit of the Commission; the estimated or agreed upon price; citation of funds available at time of commitment; the current status of performance by the actual or prospective contractor; the reason why normal acquisition procedures were not followed and, if a contract does not exist, a statement as to why the prospective contractor was selected including, if applicable, identification of other sources that were considered.

(c) The responsible contracting officer shall—

(1) Obtain from the head of the requisitioning office with appropriate approval authority:

(i) Affirmation that the Commission has or will obtain a benefit from the unauthorized commitment,

(ii) A written certification by the responsible funding certification officer that funds presently are available and were available at the time the unauthorized commitment was made, and when applicable,

(iii) A statement of corrective action that office will take to preclude repetition of the incident;

(2) Review and determine the adequacy of all facts, records, and documents furnished, and when necessary, obtain any additional material or information pertinent to the review and evaluation of the unauthorized commitment;

(3) Determine whether the price is fair and reasonable, and state in the record the reason therefor;

(4) Prepare, certify, and obtain any necessary written approval of a justification for other than full and open competition when required pursuant to FAR subpart 6.3;

(5) State in the record the corrective action to be taken to preclude repetition of the incident if the individual that made the unauthorized commitment is under the supervision of the responsible contracting officer; and

(6) Forward the request for ratification (i.e., all the information required in paragraphs (b) and (c) of this subsection) to the cognizant HCA, together with a written recommendation of an appropriate course of action including, at a minimum, a specific recommendation as to whether payment should be made and the reasons therefor.

(d) The cognizant HCA, upon receipt and review of the request for ratification file, shall determine whether ratification is in order. If so, the HCA shall forward the file to the Procurement Executive for review. If not, the HCA shall return the file to the responsible contracting officer, together with a written explanation for the decision and instructions for disposition of the case.

(e) The Procurement Executive shall review proposed ratifications submitted by HCAs. If the Procurement Executive concurs that ratification is in order, he shall obtain General Counsel concurrence that payment may be made and return the file to the cognizant HCA for that individual's ratification and subsequent return to the responsible contracting officer together with, when appropriate, instructions to issue a purchase order, contract, or contract modification, as applicable. If the Procurement Executive does not concur with the proposed ratification, he shall return the file to the HCA, together with a written explanation for the decision and instructions for disposition of the case. He will provide a copy to the General Counsel.

3501.603 Selection, appointment, and termination of appointment.

3501.603-1 General.

Heads of Contracting Activities may appoint as contracting officers one or more capable and qualified individuals of their respective staffs. These appointments may be made by memoranda delegating contracting authority, including any limitations to such authority, to positions or to named individuals. Appointments shall be evidenced by a "Certificate of Appointment", as required by FAR 1.603-3. If contracting authority is delegated to a position by memorandum, the "Certificate of Appointment" shall state the name of the individual assigned to the position.

3501.670 Legal review of proposed contract actions.

3501.670-1 Contract actions requiring legal review.

The following contract actions shall be submitted to the General Counsel for review for legal sufficiency:

(a) All proposed contracts with an estimated cost of $100,000 or more (in advance of issuance);

(b) All alleged mistakes in bids, other than apparent clerical mistakes that can be corrected pursuant to FAR 14.406-2;

(c) All determinations and findings required under the FAR;

(d) All proposed utility contracts;

(e) All proposed contracts containing insurance requirements not prescribed in the FAR or this PAR;

(f) In sealed bid procurements, all proposed awards to other than the lowest responsible and responsive bidder;

(g) Rejections of all bids and cancellations of invitations for bids;

(h) Proposed letter contracts;

(i) Written protests, whether before or after award;

(j) Unusual, novel, or unique proposed agreements, and unsolicited proposals that are to be negotiated pursuant to FAR subpart 15.5 and subpart 3515.5;

(k) Proposed ADP contracts of $25,000 or more when purchase is to be from other than a Federal Supply Service contract source;

(l) Termination actions, including pre-termination letters;

(m) All actions taken under the Disputes clause, including final decisions;

(n) Any action concerning suspension or debarment of an individual or concern;

(o) Deviations from the FAR or PAR;

(p) Any contract matter relating to litigation, disputes, or protest resolution before the courts of the United States or of the Republic of Panama, or before the Corps of Engineers Board of Contract Appeals or the Comptroller General of the United States;

(q) Determinations of nonresponsibility;

(r) Any proposed contract modification, including proceed orders, which may result in a change in the contract price of more than $25,000, or any proposed contract modification or proceed order granting a time extension of more than 20 calendar days;

(s) Any proposed contract modification resulting from either a contractor's settlement proposal under the Termination for Convenience clause, or a contractor's claim under the Suspension of Work clause, regardless of the contract value or the terms of the proposed modification;

(t) Freedom of Information Act and Privacy Act matters involving contractors or arising under or in relation to any contract;

(u) Administrative setoffs to recoup Government funds under any contract; and

(v) Requests for approval of advance payments on contracts other than those excluded in FAR 32.404.

3501.670-2 Documents to be submitted for legal review.

The following documents are to be submitted in connection with contract actions requiring legal review pursuant to 3501.670-1:

(a) For proposed construction contracts, a copy of the solicitation documents, excluding drawings, prior to the time they are furnished to prospective offerors, when feasible;

(b) For all other proposed contracts and agreements, a copy of the document to be used in the solicitation and/or award, including any other documents, excluding drawings, which support the proposed procurement action, prior to the time they are mailed to the prospective offerors, when feasible;

(c) For all other contract actions not specified in paragraph (a) or (b) of this subsection, a copy of the document itself and copies of all other documents, excluding drawings, relating to the action.

3501.670-3 General Counsel's legal review.

(a) The General Counsel shall conduct a review of the legal sufficiency of the contract action. The General Counsel shall provide to the contracting officer a written determination of whether the proposed action is legally sufficient, or the details of any insufficiency and a recommended course of action to overcome the insufficiency. A contracting officer shall not take action which is contrary to a written and timely determination of legal insufficiency from the General Counsel.

(b) The General Counsel shall complete the legal review as quickly as possible, with due regard to those procurement actions where circumstances dictate an unusually short period for completing the action.

PART 3502—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 40 U.S.C. 486(c); Article XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7638, Mar. 2, 1990, unless otherwise noted.

Subpart 3502.1—Definitions

3502.101 Definitions.

Administrator means the chief executive officer of the Panama Canal Commission. The Administrator, subject to the direction and under the supervision of the Board of Directors, exercises general and active control over the Commission's offices, business and operations, and general supervision over its officials, agents, attorneys, and employees. As contemplated at FAR 2.101, unless otherwise indicated, "Administrator" also means the Commission's Deputy Administrator.

Agency head means the Administrator of the Panama Canal Commission.

Bureau Director means an official appointed by the Administrator to direct and manage one of the Commission's three operating bureaus.

Commission means the Panama Canal Commission.

Designated Agency Ethics Official means an individual appointed by the Administrator pursuant to the "Ethics in Government Act of 1978" to coordinate and manage the agency's ethics program and to act as the principal contact with the Office of Government Ethics.

Designated contractors (sometimes referred to as "special regime contractors") means:

(a) (1) Natural persons who are nationals or permanent residents of the United States, or

(2) Corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of such natural persons—

(i) To whom contracts are awarded by the Panama Canal Commission for work to be performed in whole or in part in the Republic of Panama, and

(ii) Who are so designated in writing by the Commission.

(b) The term also includes subcontractors of designated contractors (1) who are nationals or permanent residents of the United States, or (2) which are corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of United States nationals or permanent residents.

Head of Independent Unit means an official appointed by the Administrator to direct and manage one of the Administrator's staff offices.

Head of the Contracting Activity (HCA) means the General Services Director and the Engineering and Construction Director.

Implementing Agreement means the Agreement in Implementation of Article III of the Panama Canal Treaty (TIAS 10031), signed at Washington, DC on September 7, 1977.

Inspector General means the Office of the Inspector General.

Procurement Executive means an individual designated as the senior procurement executive pursuant to 41 U.S.C. 414(3), by the Administrator from members of his staff. The Procurement Executive is delegated agency-wide responsibility to oversee development of procurement systems, establish procurement policy, evaluate procurement system performance in accordance with approved criteria, carry out specific responsibilities as assigned in this PAR, enhance career management of the procurement work force, and certify to the Administrator that procurement systems meet approved criteria.

Treaty means the Panama Canal Treaty (TIAS 10030), signed at Washington, DC on September 7, 1977.

PART 3503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.
3503.000 Scope of part.

Subpart 3503.1—Safeguards

3503.101 Standards of conduct.
3503.101-3 Agency regulations.
3503.103 Independent pricing.
3503.103-2 Evaluating the certification.

Subpart 3503.2—Contractor Gratuities to Government Personnel

3503.203 Reporting suspected violations of the Gratuities clause.
3503.204 Treatment of violations.

Subpart 3503.3—Reports of Suspected Antitrust Violations

3503.301 General.

Subpart 3503.4—Contingent Fees

3503.408 Evaluation of the SF 119.
3503.408-1 Responsibilities.
3503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 3503.5—Other Improper Business Practices

3503.502 Subcontractor kickbacks.
3503.502-2 General.

Subpart 3503.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

3503.600-70 Scope of subpart.
3503.600-71 Definitions.
3503.601 Policy.
3503.602 Exceptions.
3503.603 Responsibilities of the contracting officer.
3503.670 Exclusions.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7638, Mar. 2, 1990, unless otherwise noted.

3503.000 Scope of part.

This part implements FAR part 3, cites Commission regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 3503.1—Safeguards

3503.101 Standards of conduct.

3503.101-3 Agency regulations.

Commission regulations on Employee Responsibilities and Conduct are contained in the Commission's "Employee Code of Conduct". All personnel involved in acquisition actions shall become familiar with the statutory and regulatory prohibitions governing employee conduct. Any problems or questions concerning standards of conduct shall be referred to the Designated Agency Ethics Official.

3503.103 Independent pricing.

3503.103-2 Evaluating the certification.

(b)(3) Whenever an offer is rejected under FAR 3.103-2, or the Certificate of Independent Price Determination is suspected of being false, the contracting officer shall report the situation to the General Counsel through the cognizant Head of the Contracting Activity for referral to the Attorney General in accordance with FAR 3.303.

Subpart 3503.2—Contractor Gratuities to Government Personnel

3503.203 Reporting suspected violations of the Gratuities clause.

Any Commission employee who suspects that a violation of the Gratuities clause has occurred shall immediately report the suspected violation to the cognizant Head of the Contracting Activity. Upon being notified of the suspected violation, the HCA shall inform the Designated Agency Ethics Official and the Procurement Executive, by written memorandum, of the pertinent details of the suspected violation.

3503.204 Treatment of violations.

(b) When the HCA determines that there is probable cause to believe that a violation of the Gratuities clause has been committed, the case shall be handled as provided in the Commission debarment and suspension procedures in subpart 3509.4.

(c) The final decision as to which remedies the Commission may pursue if a violation of the Gratuities clause is found by the Debarment Committee (see 3509.406-3(b)), is reserved to the Administrator.

Subpart 3503.3—Reports of Suspected Antitrust Violations

3503.301 General.

(b) The contracting officer shall report any suspected violations of antitrust laws to the General Counsel through the cognizant Head of the Contracting Activity for referral to the Attorney General and the Commission's Debarment Committee in accordance with FAR subpart 3.3.

Subpart 3503.4—Contingent Fees

3503.408 Evaluation of the SF 119.

3503.408-1 Responsibilities.

(b) The contracting officer's documentation of the evaluation of the Standard Form 119, Statement of Contingent or Other Fees, conclusions, and any proposed actions shall be reviewed by the cognizant Head of the Contracting Activity in coordination with the General Counsel.

3503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Commission personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentations, or violations of the Covenant Against Contingent Fees shall report the matter promptly to the Designated Agency Ethics Official and the cognizant Head of the Contracting Activity.

Subpart 3503.5—Other Improper Business Practices

3503.502 Subcontractor kickbacks.

3503.502-2 General.

Any Commission employee who suspects that a violation of the Anti-Kickback Act has occurred shall immediately report the suspected violation to the Designated Agency Ethics Official and the cognizant Head of the Contracting Activity. Suspected violations shall be treated in accordance with the debarment and suspension procedures at subpart 3509.4.

Subpart 3503.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

3503.600-70 Scope of subpart.

This subpart implements and supplements FAR subpart 3.6 and sets forth Commission policy and procedures for identifying and dealing with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former Commission employees. This subpart does not apply to agreements with other departments or agencies of the Federal Government.

3503.600-71 Definitions.

Commission employee means:

(a) Any officer or employee of the Panama Canal Commission who is employed or appointed, with or without compensation, to serve more than 130 days during any period of 365 consecutive days, or

(b) Any officer or employee of the Commission who is retained, designated, appointed or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis for not more than 130 days during any period of 365 consecutive days and who actually served more than 60 days during such 365-day period.

3503.601 Policy.

Except as authorized at 3503.602 or excluded at 3503.670, no contract shall be awarded without competition to a—

(a) Former Commission employee (or to a business concern or other organization owned or substantially owned or controlled by a former Commission employee) whose employment terminated within 365 calendar days before submission of an offer to the Commission; or

(b) Prospective contractor which employs, or proposes to employ, a current Commission employee or a former Commission employee whose employment terminated within 365 calendar days before submission of an offer to the Commission, if either of the following conditions exist:

(1) The current or former Commission employee is or was involved in developing or negotiating the offer for the prospective contractor.

(2) The current or former Commission employee will be involved directly or indirectly in the management, administration, or performance of the contract.

3503.602 Exceptions.

(a) The Director, Office of Executive Administration in his capacity as the Designated Agency Ethics Official may authorize an exception, in writing, to the policy in FAR 3.601 and 3503.601 for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, section 27 of the Office of Federal Procurement Policy Act, or Commission regulations in the "Employee Code of Conduct". The Director, Office of Executive Administration shall consult with the cognizant Bureau or Staff Director who originated the request and with the General Counsel before authorizing any exceptions.

(b) This subpart does not apply to subcontracts, that is, agreements to undertake part of the work as an independent contractor. However, where subcontracts essentially create an "employer-employee" relationship between the Commission and the subcontractors, the subpart shall apply. In determining whether such a relationship exists, the contracting officer shall generally be guided by the standards of Chapter 304, Subchapter 1-4 of the "Federal Personnel Manual" in distinguishing between employees and independent contractors.

3503.603 Responsibilities of the contracting officer.

Before awarding a contract, the contracting officer shall obtain an authorization under 3503.602 for any of the reasons stated in FAR 3.603.

3503.670 Exclusions.

Former or current Commission employees who participated personally and substantially in the conduct of any Commission procurement of supplies or services, including those who were responsible for reviewing and approving the award, modification, or extension of any contract for such procurement, are excluded from the 365 calendar day "before submission of an offer" time period specified in 3503.601 (a) and (b). Instead, the time period for such employees shall be two years after the last date the employee participated personally and substantially in the conduct of any Commission procurement of supplies or services, or personally reviewed and approved the award, modification, or extension of any contract for such procurement. This two-year prohibition applies irrespective of whether the contract being sought is on a competitive or noncompetitive basis.

PART 3504—ADMINISTRATIVE MATTERS

Subpart 3504.6—Contract Reporting

Sec.
3504.602 Federal Procurement Data System.
3504.903 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7640, Mar. 2, 1990, unless otherwise noted.

Subpart 3504.6—Contract Reporting

3504.602 Federal Procurement Data System.

(b) As indicated in the FPDS Reporting Manual, the Commission is exempt from the reporting requirements of the Federal Procurement Data System, except for the procurement data that is required to be provided in accordance with Public Law 96-39 (Trade Agreements Act of 1979) as prescribed by OFPP Policy Letter 80-8 (as amended).

3504.903 Procedures.

The Commission will report the information required under FAR 4.902(b) directly to the IRS.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 3505—PUBLICIZING CONTRACT ACTIONS

Sec.
3505.000 Scope of part.

Subpart 3505.2—Synopses of Proposed Contract Actions

3505.202 Exceptions.

Subpart 3505.5—Paid Advertisements

3505.502 Authority.
3505.503 Procedures.
3505.503-70 Authorization.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7640, Mar. 2, 1990, unless otherwise noted.

3505.000 Scope of part.

This part implements FAR part 5 and provides Commission policies and procedures for publicizing contract opportunities, and provides for an additional exception to the requirements for use of "Commerce Business Daily" notices.

Subpart 3505.2—Synopses of Proposed Contract Actions

3505.202 Exceptions.

(a)(13) The contract action is one for which participation in the acquisition will be limited to sources in Panama pursuant to the conditions prescribed in 3570.102(e). The Procurement Executive will monitor and maintain a record of proposed contract actions that are exempt from the notice requirements of FAR 5.201 by operation of this exception.

Subpart 3505.5—Paid Advertisements

3505.502 Authority.

(a) *Newspapers.* Authority to approve the publication of paid advertisements in newspapers is vested in the HCA or designee.

3505.503 Procedures.

(a) *General.* When there is a reasonable probability that supplies or services (including construction) are available in Panama that are comparable in quality and price to those which may be obtained from other sources, and when local advertising is reasonably practical, the contracting officer shall request authorization from the HCA or designee to advertise the procurement action within the appropriate Panamanian market. The request for authorization shall include—

(1) A description of the proposed procurement action and the supplies or services to be procured;

(2) A description of how the determination was made that the Panamanian preference may apply; and

(3) A summary of how the appropriate advertising market was identified.

3505.503-70 Authorization.

The HCA or designee shall review the request for authorization of paid advertising and, if concurring, shall grant authorization in writing to the contracting officer to proceed. The written authorization shall specify any limitations on the advertising that are deemed appropriate. The HCA shall furnish a copy of each such authorization to the Procurement Executive.

PART 3506—COMPETITION REQUIREMENTS

Sec.
3506.000 Scope of part.

Subpart 3506.3—Other Than Full and Open Competition

3506.300 Scope of subpart.
3506.302-4 International agreement.
3506.303 Justifications.
3506.303-1 Requirements.
3506.303-2 Content.
3506.304 Approval of the justification.
3506.304-70 Class justifications.

Subpart 3506.5—Competition Advocate

3506.501 Requirement.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7640, Mar. 2, 1990, unless otherwise noted.

3506.000 Scope of part.

This part implements FAR part 6 and prescribes Commission policies and procedures related to competition requirements.

Subpart 3506.3—Other Than Full and Open Competition

3506.300 Scope of subpart.

This subpart provides guidance on:

(a) The application of the Panama Canal Treaty of 1977 between the United States and Panama as an exemption to the requirement for full and open competition, and

(b) The preparation and approval of individual and class Justifications for Other Than Full and Open Competition (JOFOC's).

3506.302-4 International agreement.

(a) *Authority.* Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 establishes that the Commission shall give preference to Panamanian supplies and services in its procurement activities. Such preference is understood to mean that if supplies or services (including construction) of comparable quality and price are available when required and can be obtained from sources both within and without the Republic of Panama, preference shall be afforded to those sources within the Republic of Panama to the maximum extent possible. When choosing between goods from sources within the Republic of Panama, preference shall be given to those with a larger percentage of components of Panamanian origin. This is not intended to require the purchase of Panamanian supplies and services, as defined herein, where superior quality or lower prices are available from other sources. Part 3570 sets forth specific guidance and policy with respect to the Commission's implementation of Article IX.

(c) *Limitations.* Solicitations above the small purchase limitation that are intended for exclusive acquisition from sources in Panama shall be supported by a class or individual determination and findings as required by 3570.102(e).

3506.303 Justifications.

3506.303-1 Requirements.

(c) The scope of the actual procurement shall not exceed the scope of the proposed procurement cited in the JOFOC. If a change to the contract exceeds this limitation, the contract change shall not be consummated until an amended JOFOC has been approved.

(d) When contract actions are subject to the Agreement on Government Procurement and the authority of FAR 6.302-3(a)(2)(i) or 6.302-7 is being cited as the basis for not providing full and open competition, a copy of the justification shall be forwarded to the Procurement Executive as the point of contact with the Office of the United States Trade Representative.

3506.303-2 Content.

In addition to the requirements of FAR 6.303-2, the justification shall include—

(a) The type of contract;

(b) A statement of delivery requirements;

(c) The total estimated dollar value, including options, for the acquisitions covered by the justification; and

(d) A copy of the approved Acquisition Plan when the acquisitions meet the criteria for a written Acquisition Plan under subpart 3507.1.

3506.304 Approval of the justification.

(a) Except as noted at FAR 6.304(b), the approval of a justification for other than full and open competition shall be in writing and at the levels given below—

(1) For a proposed contract not exceeding $100,000, the HCA is the approval authority. This approval is not required when the contract is one of those cited in FAR 6.304(a)(1) (i) through (iv).

(2) For a proposed contract over $100,000, but not exceeding $1,000,000, the Competition Advocate is the approval authority.

(3) For a proposed contract over $1,000,000, but not exceeding $5,000,000, the Procurement Executive is the approval authority.

(4) For a proposed contract over $5,000,000, the Administrator is the approval authority.

(b) Contracting officers shall consult with the Competition Advocate prior to submitting any justification for approval pursuant to paragraph (a) of this section.

3506.304-70 Class justifications.

(a) Class justifications shall be approved in the same manner as individual justifications. To determine the approval level for a class justification, the aggregate estimated dollar value of all actions contemplated for one year shall be used to establish the appropriate dollar threshold for approval.

(b) The following are examples of appropriate class justifications:

(1) A basic ordering agreement (BOA) including all orders to be issued under the BOA for the term of the BOA;

(2) Contracts to be awarded to more than one contractor to provide Government-furnished property for assembly into an end item, in which case the circumstances of the class justification must justify all the contracts proposed under the justification.

(c) Requests for approval at any level must be submitted to the approval authority before release of the solicitation. The solicitation shall not be released until the justification is approved in writing (but see FAR 6.303-1(e)).

(d) The Procurement Executive shall maintain a list of products, materials, and services that have been granted a class justification for exclusive acquisition from sources in Panama (see 3506.302-4(c)).

Subpart 3506.5—Competition Advocate

3506.501 Requirement.

The Administrator shall designate in writing one Competition Advocate who shall serve as the agency and procuring activities competition advocate for all Commission acquisitions.

PART 3507—ACQUISITION PLANNING

Subpart 3507.1—Acquisition Plans

Sec.
3507.103 Agency-head responsibilities.

Subpart 3507.3—Contractor Versus Government Performance

3507.301 Policy.

Authority: 40 U.S.C. 486(c).

Source: 55 FR 7641, Mar. 2, 1990, unless otherwise noted.

Subpart 3507.1—Acquisition Plans

3507.103 Agency-head responsibilities.

(c)(1) Formal acquisition planning provided at FAR subpart 7.1 is primarily designed for complex and costly acquisitions. However, the disciplines of the prescribed planning process are useful to all acquisitions, even if on a less formal basis.

(2) Written acquisition plans shall be prepared for—

(i) All development (see FAR 35.001) acquisitions whose estimated contractual cost is $1,000,000 or more annually;

(ii) Supply, service, and construction acquisitions whose estimated contractual cost is $3,000,000 or more for any fiscal year. Excluded are repetitive requirements-type and fuel contracts.

(d) The Acquisition Plan (AP) shall include all subsystems, Government-furnished property, major component contractual actions, and all other contracts which have a significant effect on the total program.

(f) The planner for acquisitions requiring a formal, written plan shall be the program manager or other official having overall responsibility for the program concerned.

(g)(1) The planner shall obtain the written concurrence of the appropriate contracting officer for each acquisition plan.

(2) The Head of the Contracting Activity shall review and approve the acquisition plan and ensure that (i) the objectives of the AP are realistic and achievable, and (ii) solicitations and contracts are appropriately structured to equitably distribute the technical,

financial, and business risks, considering the phase of the acquisition, the technical requirements, and business and legal constraints.

(3) Acquisition plans shall be furnished by the cognizant HCA to the Procurement Executive.

(j) When a need is urgent enough to require an unusually compressed delivery or performance schedule, and the preparation of a detailed written AP would interfere with the successful meeting of that schedule, the Procurement Executive may waive appropriate requirements of FAR subpart 7.1 and this subpart 3507.1. The waiver shall be in writing and shall specifically designate those requirements that are waived.

Subpart 3507.3—Contractor Versus Government Performance

3507.301 Policy.

(a) For the purposes of OMB Circular No. A-76, a commercial source is defined as "a business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia or the Commonwealth of Puerto Rico, which provides a commercial product or service." Accordingly, by virtue of the Commission's location in the Republic of Panama, FAR subpart 7.3 is not applicable to the Panama Canal Commission because commercial services would have to be contracted out to sources located in Panama. Commission policy regarding commercial services to be contracted out to sources in Panama is set forth in paragraph (b) of this section.

(b) Commercial work and services shall be contracted out when there are available reliable local contractors and the expected cost is beneficial to the Commission. However, when commercial work/service to be done requires skills that the Commission should have and/or develop, then a careful evaluation shall be made before such work/service is contracted outside the agency. The cognizant Head of the Contracting Activity shall be the approving official for commercial work and services to be contracted out pursuant to this policy.

PART 3508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
3508.001 Priorities for use of Government supply sources.

Subpart 3508.4—Ordering from Federal Supply Schedules

3508.404 Using schedules.
3508.404-1 Mandatory use.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7642, Mar. 2, 1990, unless otherwise noted.

3508.001 Priorities for use of Government supply sources.

(a) Under Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977, the Panama Canal Commission is required under certain conditions to give preference, to the maximum extent possible, to procuring supplies and services obtainable in Panama (see 3506.302-4(a), subpart 3525.8, and part 3570). Therefore, when supplies or services are to be procured from sources in Panama under the preference requirement of Article IX, the mandatory use of sources for a like item of supply or service, as required by FAR part 8, shall not be applicable.

Subpart 3508.4—Ordering from Federal Supply Schedules

3508.404 Using schedules.

3508.404-1 Mandatory use.

When supplies or services are procured from sources in Panama under the preference requirement of Article IX, as stated in 3508.001(a), the mandatory use of a Federal Supply Schedule for a like item of supply or service shall not be applicable. When a procurement is not made under the Panamanian preference of Article IX, and delivery or performance is to be made in Panama, the mandatory supply schedule should be carefully evaluated for the following exceptions to mandatory use:

(d) *Geographic coverage.* Each Federal Supply Schedule delineates the specific geographic area for which it is mandatory for use. The geographic area applies to the location where final delivery of the supplies is to be made, or the service to be performed, and not to the location of the ordering office. In most cases, the Republic of Panama will not be within the geographic limitations of the schedule and mandatory use will not be applicable. The mandatory use provisions of FAR 8.4 and 41 CFR 101-26.4 are applicable to Commission offices located in the United States when ordering supplies or services to be delivered or performed in the United States for their own use.

(e) *Lower prices for identical items.* The Commission may purchase products from any source pursuant to the conditions set forth in FAR 8.404-1(e).

PART 3509—CONTRACTOR QUALIFICATIONS

Sec.
3509.000 Scope of part.

Subpart 3509.1—Responsible Prospective Contractors

3509.104-3 Application of standards.
3509.106 Preaward surveys.
3509.106-70 Professional type services preaward surveys.

Subpart 3509.2—Qualification Requirements

3509.202 Policy.
3509.206 Acquisitions subject to qualification requirements.
3509.206-1 General.

Subpart 3509.4—Debarment, Suspension, and Ineligibility

3509.404 Parties excluded from procurement programs.
3509.406 Debarment.
3509.406-1 General.
3509.406-2 Causes for debarment.
3509.406-3 Procedures.
3509.407 Suspension.
3509.407-3 Procedures.

Subpart 3509.5—Organizational Conflicts of Interest

3509.500 Scope of subpart.
3509.502 Applicability.
3509.503 Waiver.
3509.504 Contracting officer responsibilities.

Sec.
3509.506 Information sources.
3509.507 Procedures.
3509.508 Solicitation provision and contract clause.
3509.508-1 Solicitation provision.
3509.508-2 Contract clause.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7642, Mar. 2, 1990, unless otherwise noted.

3509.000 Scope of part.

This part implements FAR part 9 and provides Commission policy and procedures pertaining to: contractor's responsibility; debarment, suspension, and ineligibility; qualified products; and organizational conflicts of interest.

Subpart 3509.1—Responsible Prospective Contractors

3509.104-3 Application of standards.

(c) *Satisfactory performance record.* If the contracting officer invokes the presumption of nonresponsibility required by FAR 9.104-3(c), the contracting officer shall give notice, together with the reasons for invoking the presumption, to the Procurement Executive.

3509.106 Preaward surveys.

3509.106-70 Professional type services preaward surveys.

(a) Generally, preaward surveys are not performed for acquisition of professional type services such as those provided by medical doctors, lawyers or other licensed and/or regulated professions.

(b) To assist in making a determination of responsibility for professional type services, the types of information listed below shall be obtained from the offeror when applicable:

(1) Organizational structure and plan contemplated to accomplish the service;

(2) Summary of experience in performing the same or similar service;

(3) Resumes of key personnel with particular emphasis on academic accomplishments pertinent to the service to be performed;

(4) Evidence of professional liability insurance, or evidence such insurance can be obtained;

(5) Membership in professional organizations;

(6) Information on pertinent state and local licenses; and

(7) Information on the firm or key individuals that reflect their status or professional recognition in their field of endeavor, such as awards and published articles in professional journals or magazines.

(c) When the statement of work includes a review of credentials by the requiring activity, this review should be considered a part of the preaward survey, and other information requested from the offeror should be minimized.

Subpart 3509.2—Qualification Requirements

3509.202 Policy.

(a)(1) The contracting officer shall ensure that the written justification required by FAR 9.202(a)(1) is prepared prior to establishing a requirement for testing or other quality assurance demonstration that must be completed by an offeror before the offeror is awarded a contract.

3509.206 Acquisitions subject to qualification requirements.

3509.206-1 General.

(b) The contracting officer is designated to make the determination required by FAR 9.206-1(b).

Subpart 3509.4—Debarment, Suspension, and Ineligibility

3509.404 Parties excluded from procurement programs.

(c) The Chairman of the Debarment Committee (see 3509.406-3(b)) shall carry out the actions required by FAR 9.404(c).

3509.406 Debarment.

3509.406-1 General.

(a) The Administrator shall be the Commission debarring official.

3509.406-2 Causes for debarment.

In addition to the causes listed in FAR 9.406-2, the use of a Panama Canal Commission employee or a member of the Commission's Board of Directors as an agent or advocate for a Commission contractor, or prospective contractor, shall be a cause for debarment.

3509.406-3 Procedures.

(a) *Investigation and referral.* (1) Any Commission employee who suspects that a violation possibly warranting debarment may have occurred shall immediately report the suspected violation to the General Counsel.

(i) Any Commission employee who discovers that a debarred individual or firm has reestablished itself under a new name shall immediately notify the General Counsel directly or through appropriate channels.

(ii) Any Commission employee having information relating to a Commission employee acting for or otherwise representing a contractor doing business with the Commission shall immediately notify the General Counsel.

(2) Upon being notified of a suspected violation, the General Counsel shall refer the matter to the Inspector General for investigation and shall notify the contracting officer and the HCA.

(3) The contracting officer shall, in coordination with the Inspector General and the General Counsel, assemble all pertinent information and prepare a report containing all available evidentiary material, including copies of indictments and conviction notices when applicable, and the names of any affiliates and their officers associated with a contractor suspected of a violation.

(4) The contracting officer shall submit the report through the HCA to the Debarment Committee.

(5) Any recommendation by the HCA, including a recommendation not to debar, shall be submitted with rationale to the Debarment Committee along with the contracting officer's report.

(b) *Decisionmaking process.* (1) The Debarment Committee shall consist of:

(i) Voting members—

(A) Chairman—A member appointed in writing by the Procurement Executive. The Chairman shall receive nominations for membership on the Committee as follows:

(B) Member—Office of General Counsel,

(C) Member—Engineering and Construction Bureau,

(D) Member—General Services Bureau, and

(E) Member—Office of Executive Administration;

(ii) Nonvoting members—

(A) Recording Secretary, to be appointed by the Chairman, and

(B) Legal advisor (who shall be nominated by the General Counsel and who shall always be someone other than the Office of General Counsel voting member).

(2) Upon review of the report submitted by the contracting officer, the Debarment Committee shall review all available information and recommend debarment action when warranted by the facts. If necessary, additional information may be solicited from appropriate sources.

(3) Where actions are not based upon a conviction or judgment, or where there is a genuine dispute over the facts, an opportunity shall be provided to the contractor to appear before the Committee, be represented by counsel, submit evidence, and confront witnesses, as prescribed in FAR 9.406-3(b)(2)(i).

(4)(i) If the Committee recommends debarment, a memorandum setting forth the facts which establish the basis for the recommendation shall be submitted to the debarring official recommending the period of debarment, consistent with FAR 9.406-4, and the supporting reasons.

(ii) A notice of proposal to debar, addressed to each company, affiliate, and individual involved in the violation, shall accompany the memorandum to the debarring official.

(5) The debarring official shall take the actions required by FAR 9.406-3 (c), (d), and (e).

(6) These procedures apply equally to U.S., Panamanian, and third country nationals or firms contracting with the Panama Canal Commission.

(7) The Commander in Chief, Southern Command (USCINCSO) shall be notified of any Commission debarment or suspension decision made pursuant to 3509.406-3 or 3509.407-3. The USCINCSO maintains a consolidated list of contractors in Central and South America to whom contracts will not be awarded and from whom bids or proposals will not be solicited.

[55 FR 7642, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3509.407 Suspension.

3509.407-3 Procedures.

The investigation, decision, and notice procedures established in 3509.406-3 for debarment also apply to suspension actions. Notice of Suspension shall be provided to USCINCSO as indicated in 3509.406-3(b)(7).

Subpart 3509.5—Organizational Conflicts of Interest

3509.500 Scope of subpart.

This subpart establishes Commission policy and procedures for identifying, evaluating, and resolving organizational conflicts of interest. It is the Commission's policy to avoid, neutralize, or mitigate organizational conflicts of interest. If the Commission is unable to neutralize or mitigate the effects of a potential conflict of interest, it will disqualify the prospective contractor or will terminate the contract when potential or actual conflicts are identified after award.

3509.502 Applicability.

This subpart applies to all Commission contracts except agreements with other Federal agencies.

3509.503 Waiver.

The Commission's General Counsel is designated as the authority to waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Commission's interest.

Any request for waiver must be in accordance with FAR 9.503.

3509.504 Contracting officer responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by the contracting officer's own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Commission. In that case, the contracting officer may, with the approval of the cognizant Head of the Contracting Activity, set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible.

(d) The contracting officer shall, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract, including disclosure of such conflicts of interest with respect to proposed subcontractors.

3509.506 Information sources.

(a) *Disclosure.* At the request of the contracting officer, prospective Commission contractors responding to solicitations or submitting unsolicited proposals shall provide information to the contracting officer for use in identifying, evaluating, or resolving potential organizational conflicts of interest. The submittal may be a certification or a disclosure, pursuant to paragraphs (a)(1) or (2) of this section.

(1) If the prospective contractor is not aware of any information bearing on the existence of any organizational conflict of interest, the contractor shall so certify.

(2) Prospective contractors not certifying in accordance with paragraph (a)(1) of this section must provide a disclosure statement which describes concisely all relevant facts concerning any past, present, or planned interests relating to the work to be performed and bearing on whether they, including their chief executives, directors, or any proposed consultant or subcontractor, may have a potential organizational conflict of interest.

(b) *Failure to disclose information.* Any prospective contractor failing to provide full disclosure, certification, or other required information will not be eligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations requesting the information in paragraph (a) of this section, the Commission will consider any inadvertent failure to provide disclosure certification as a "minor informality" (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

(c) *Exception.* When the contractor has previously submitted a conflict of interest certification or disclosure for a contract, only an update of such statement is required when the contract is modified.

3509.507 Procedures.

(a) The contracting officer shall document in writing the resolution of any potential or actual conflicts of interest identified. This documentation shall be reviewed and approved by the General Counsel prior to award. If the organizational conflict of interest cannot be resolved, the contracting officer shall disqualify the prospective contractor from receiving the contract award.

(b) The General Counsel shall review and make the final decision required at FAR 9.507(c)(4) on any contractor request for higher review of the contracting officer's decision.

3509.508 Solicitation provision and contract clause.

3509.508-1 Solicitation provision.

The contracting officer shall insert the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure in solicitations that in the contracting officer's judgment may be susceptible to organizational conflicts of interest.

3509.508-2 Contract clause.

The contracting officer shall insert the clause at 3552.209-71, Organizational Conflict of Interest, in solicitations and contracts that will include the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure.

PART 3510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
3510.001 Definitions.
3510.004 Selecting specifications or descriptions for use.
3510.004-70 Brand name or equal purchase descriptions.
3510.007 Deviations.
3510.011 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

Source: 55 FR 7644, Mar. 2, 1990, unless otherwise noted.

3510.001 Definitions.

Salient characteristics mean those particular characteristics that specifically describe the essential physical and/or functional features of a brand name product. They are those essential physical and/or functional features which are identified in the specifications as a mandatory requirement which a proposed "equal" product must possess in order for the product to be considered responsive. The term excludes those physical and/or functional features of a brand name product that:

(a) Are not essential to the needs of the Commission, or

(b) Do not affect the suitability of the product for its intended use.

3510.004 Selecting specifications or descriptions for use.

3510.004-70 Brand name or equal purchase descriptions.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only under the conditions indicated in FAR 10.004(b)(2) and (3) and shall be in accordance with this subsection. The office initiating the "brand name or equal" purchase request is responsible for documenting to the contracting officer's satisfaction that the conditions for its use are valid. Where feasible, all known acceptable brand name products should be referenced.

(b) The words "or equal" should not be added when the contracting officer has determined, with the concurrence of the General Counsel and the signed approval of the cognizant HCA, that only a particular product meets the essential requirements of the Commission.

(c) Brand name or equal purchase descriptions shall include, in addition to those characteristics set forth in FAR 10.004(b)(1) to the extent they are applicable, the following type of information to clearly identify the specific item named by brand(s) and its salient characteristics:

(1) Complete common generic identification of the item required;

(2) Applicable model, make, or catalog number for each brand name product referenced, and identity, if applicable, of the commercial catalog in which it appears;

(3) Name of manufacturer, producer, or distributor of each brand name product reference (and address if company is not well known); and

(4) All salient characteristics of the brand name product or products which have been determined by the initiating office, with the concurrence of the contracting officer, to be essential to meet the Commission's minimum physical and/or functional requirements. The purchase description shall state or otherwise indicate that the salient characteristics are manda-

tory features which proposed equal products must possess in order to be considered responsive.

(d) Except as provided in paragraph (e) of this subsection, when a brand name or equal purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation schedule for completion by the offeror:

To be completed by offeror:
Manufacturer's Name: ——————
Manufacturer's Address: ——————
Brand Name of Product (if any): ——————

NOTE: Offerors are cautioned and advised to read provision 3552.210-70, Brand Name Products or Equal, located elsewhere in this solicitation, prior to completing the above. As indicated therein, offerors proposing to furnish an "equal" product must furnish all descriptive material necessary to determine the acceptability of such product.

(e) Where component parts of an end item are described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision at 3552.210-70 to such component parts would be impractica- le, the requirements of paragraph (d) f this subsection and 3510.011(h) hall not apply with respect to such omponent parts. However, if the pro- ision is included in the solicitation for ther reasons, there shall also be in- luded in the solicitation a statement identify either the component parts lescribed by brand name or equal urchase descriptions) to which the rovision applies or those to which it oes not apply. Depending upon hether the former or latter alterna- ve is used, the statement should be bstantially as follows:

The provision 3552.210-70, Brand Name oducts or Equal, located elsewhere in this icitation, applies to the following compo- nt parts: (List the component parts to ich the provision applies.)

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he provision 3552.210-70, Brand Name ducts or Equal, located elsewhere in this citation, does not apply to the following ponent parts: (List the component parts which the provision does not apply.)

s paragraph (e) also applies to ac- sories related to an end item where rand name or equal purchase description of the accessories is a part of the description of the end item.

(f) When considered appropriate by the contracting officer, solicitations incorporating brand name or equal purchase descriptions may require the submission of offer samples in the case of offerors proposing to furnish "equal" products; such samples shall not be required from offerors who offer brand name products referenced in purchase descriptions.

(g) Offers proposing to furnish products other than those specifically referenced by brand name shall be considered for award when the contracting officer determines under provision 3552.210-70 that the offered products meet the salient characteristics identified in the purchase description. Offers shall not be rejected as nonresponsive for failure of the product to equal a characteristic of a brand name product if such characteristic was not specified as a salient characteristic in the brand name or equal purchase description. However, if it is clearly established that the unspecified characteristic is essential to the intended use, the solicitation is defective and no award shall be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth all salient characteristics.

(h) The brand name or equal policies and procedures in this subsection may be used in small purchase acquisitions to the extent that they are applicable and practicable.

(i) This subsection is not applicable to construction contracts since the use of equal equipment, materials, articles, or processes are covered by FAR clause 52.236-5, Material and Workmanship.

3510.007 Deviations.

Heads of Contracting Activities are designated to authorize the deviations permitted under FAR 10.007 and are responsible for ensuring that the actions required by FAR 10.007 are accomplished.

3510.011 Solicitation provisions and contract clauses.

(h) The contracting officer shall insert the provision at 3552.210-70, Brand Name Products or Equal, in solicitations that call for the delivery of a brand name or equal product, selecting the language that is appropriate for (1) invitation for bids, or (2) requests for proposals, as parenthetically indicated in the provision. (However, see 3510.004-70(e) regarding the applicability of the provision to component parts of an end item and to accessories related to an end item.)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 3513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.
3513.000 Scope of part.

Subpart 3513.1—General

3513.105 Small business-small purchase set-asides.
3513.107 Solicitation and evaluation of quotations.

Subpart 3513.2—Blanket Purchase Agreements

3513.201 General.
3513.203 Establishment of Blanket Purchase Agreements.
3513.203-1 General.
3513.204 Purchases under Blanket Purchase Agreements.

Subpart 3513.5—Purchase Orders

3513.505 Purchase order and related forms.
3513.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
3513.505-70 Purchase requisition.
3513.505-71 Division Purchase Order.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 54 FR 7645, Mar. 2, 1990, unless otherwise noted.

3513.000 Scope of part.

This part implements and supplements FAR part 13 and provides Commission policies and procedures relating to small business-small purchase set-asides, blanket purchase agreements, and purchase order forms.

Subpart 3513.1—General

3513.105 Small business-small purchase set-asides.

(a) The requirements of Public Law 95-507 relating to setting aside acquisitions of supplies or services with an anticipated dollar value of $25,000 or less do not apply to such purchases when delivery or performance is to be made to or within the Republic of Panama. The requirements do apply to Commission offices located in the United States for the purchase of supplies or services for their own use and not for delivery or performance in Panama.

3513.107 Solicitation and evaluation of quotations.

(a) *Forms.* (4) The following Commission forms may be used by the Logistical Support Division in lieu of Standard Form 18 for requesting small purchase price quotations:

(i) *Panama Canal Form No. 1821, Request For Quotation.* This form may be used by the Purchasing and Contracts Branch for the solicitation of nonstock items and services. It must be used in conjunction with forms 7071 and 7074 (see paragraph (a)(4)(iv) of this section).

(ii) *Panama Canal Form No. 1822, Request For Quotation Continuation.* This form may be used with Panama Canal Form No. 1821 when additional space is needed.

(iii) *Panama Canal Form No. 2008, This Is A Request For Prices; It Is Not An Order.* This form may be used by the Inventory Management Branch for the solicitation of standard stock items. It must be used in conjunction with forms 7071 and 7074 (see paragraph (a)(4)(iv) of this section).

(iv) *Panama Canal Commission Form 7071, General Contract Clauses And Provisions, Small Purchases;* and *Panama Canal Commission Form 7074, Information Sheet.* These two forms shall be forwarded to prospective suppliers together with either Panama Canal Form No. 1821 or Panama Canal Form No. 2008, as applicable.

Subpart 3513.2—Blanket Purchase Agreements

3513.201 General.

(a) Except for the rental of construction equipment, blanket purchase agreements (BPA's) may be established only by contracting officers within the General Services Bureau. The contracting officers authorized to establish BPA's are:

(1) Chief, Inventory Management Branch for acquisition of inventory stocks;

(2) Chief, New Orleans Branch for acquisition of parts in the New Orleans area for the Motor Transportation Division and such other items as may be designated by the General Services Director;

(3) Chief, Construction Division, Engineering and Construction Bureau, for the rental of construction equipment; and

(4) Chief, Purchasing and Contracts Branch for acquisition of supplies or services not covered under paragraphs (a)(1) through (3) of this section.

[55 FR 7645, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3513.203 Establishment of Blanket Purchase Agreements.

3513.203-1 General.

(a) Blanket purchase agreements may be established for supplies or services which are readily available and for which their purchase does not require detailed technical specifications, technical inspection, or complex terms and conditions.

(b) Only the contracting officer (CO) and officials authorized by a CO and designated in the BPA shall be permitted to request deliveries. Delivery (call) orders shall usually be made by telephone or in person. Before placing a call order against the BPA, each requirement shall be screened for availability from Commission inventory sources and from the mandatory sources of supply prescribed in FAR part 8. Necessary controls shall be maintained by the person placing the call orders under the BPA to ensure that any limitation stated therein is not exceeded. The BPA identification number shall be specified each time a delivery is requested.

(c) The procedure for establishing and using BPA's is prescribed in the Commission's Financial Systems Manual 14.020, covering BPA's in general, and 14.007, covering BPA's for automotive parts.

3513.204 Purchases under Blanket Purchase Agreements.

(a) Individual call orders under a BPA shall not exceed the dollar limitation specified in the BPA, which limitation shall not exceed the dollar limitations established by the:

(1) Engineering and Construction Director for the rental of construction equipment, and

(2) General Services Director for all other BPA's.

(b) Purchases under BPA's shall be documented on Panama Canal Form No. 3099, Request For Purchase/Call Order.

Subpart 3513.5—Purchase Orders

3513.505 Purchase order and related forms.

3513.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

The following Commission order forms may be used in lieu of Optional Forms 347 and 348 for the purposes described below.

(a) *Panama Canal Form No. 1010, Purchase Order.* This form may be used by the Inventory Management Branch (1) for the small purchase acquisition of standard stock items, and (2) as a delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply.

(b) *Panama Canal Form No. 1820, Purchase Order.* This form may be used by the Purchasing and Contracts Branch (1) for the small purchase acquisition of non-stock items and services, and (2) as a delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply.

(c) *Panama Canal Form No. 3083, Purchase Order Continuation.* This form may be used with Panama Canal Form No. 1820 when additional space is needed.

(d) *Panama Canal Form No. 3163, Division Purchase Order.* This form may be used by all activities having contracting authority for the decentralized procurement of supplies and services (see 3513.505-71).

(c) *Panama Canal Form No. 3163-MTD, Division Purchase Order.* This form may be used by the Motor Transportation Division and the New Orleans Branch, Logistical Support Division for purchases of nonstandard stock automotive repair parts that do not exceed dollar amounts established by the General Services Director.

3513.505-70 Purchase requisition.

Panama Canal Form No. 1821, Purchase Requisition, shall be used by requiring activities to request purchasing action by the Purchasing and Contracts Branch, Logistical Support Division. The procedure for using purchase requisitions is prescribed in the Commission's Financial Systems Manual 14.010.

3513.505-71 Division Purchase Order.

(a) *General.* The Division Purchase Order (DPO), PCC Form No. 3163, may be used by all activities that have contracting authority for the decentralized procurement of supplies and services (see 3501.601(b)). When repetitive purchases within the authorized DPO dollar limitation are made for the same supplies or services, the activity shall request the Chief, Purchasing and Contracts Branch to establish a BPA (see subpart 3513.2). A detailed procedure for the use of the DPO is prescribed in the Commission's Financial Systems Manual 14.005, covering DPO's in general, and 14.007, covering DPO's for automotive parts.

(b) *Responsibilities.* (1) Bureau directors and heads of independent units that use the DPO shall—

(i) Ensure that, whenever practicable, the functions of procurement approval, receipt documentation, and payment approval in the use of a DPO are performed by three separate persons. In no case shall the same person be permitted to perform all three functions.

(ii) Approve and sign all DPO's, subject to the conditions specified in paragraphs (b) (2)(iii) and (3) of this subsection, or appoint in writing by position or by name one or more purchasing agents to act as approval and signatory authority. Such appointees shall be at an organizational level sufficient to ensure responsible control over the obligation of funds that the DPO represents.

(2) Designated purchasing agents shall—

(i) Approve and sign DPO's within their delegated dollar authority.

(ii) Supervise the use and issuance of DPO's and verify that such use and issuance are in compliance with the FAR, this PAR, and the Commission's Financial Systems Manual.

(iii) Ensure that the following conditions exist before approving purchases to be made on DPO's:

(A) There is a valid need for the supplies or services;

(B) A unit fund controller has certified the availability of funds for the proposed purchase;

(C) The vendor is reputable and the price is reasonable; and

(D) The DPO is not being used as a means to purchase a known requirement in excess of the authorized DPO dollar limitation by fragmentizing the requirement (i.e., by breaking the total quantity of the requirement into smaller quantities that can be purchased on two or more DPO's, each of which does not exceed the authorized dollar limitation but which, collectively, will result in the purchase of the total quantity of the requirement).

(3) Individuals authorized to approve and sign DPO's shall ensure that Government funds are not expended for standard stock items, unauthorized office supplies, furnishings, appliances, or for items that are intended solely for personal convenience or to satisfy personal desires of an official or that are nonessential to the needs of the Government and do not contribute to the fulfillment of the Commission's mission.

(4) The General Services Director shall delegate authority for contracting by means of DPO's to bureau directors and heads of independent units. Such delegation shall be published from time to time in bulletin or memorandum form and shall conform to dollar limitations approved by the Administrator.

(c) *Panama Preference.* DPO purchases shall conform to the Treaty preference given to supplies and services obtainable in Panama, as prescribed in subpart 3570.1.

PART 3514—SEALED BIDDING

Sec.

3514.000 Scope of part.

Subpart 3514.2—Solicitation of Bids

3514.201-6 Solicitation provisions.
3514.205 Solicitation mailing lists.
3514.205-1 Establishment of lists.

Subpart 3514.4—Opening of Bids and Award of Contract

3514.404 Rejection of bids.
3514.404-1 Cancellation of invitations after opening.
3514.406 Mistakes in bids.
3514.406-3 Other mistakes disclosed before award.
3514.406-4 Mistakes after award.
3514.407 Award.
3514.407-1 General.
3514.407-6 Equal low bids.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7647, Mar. 2, 1990, unless otherwise noted.

3514.000 Scope of part.

This part implements and supplements FAR part 14 by providing additional solicitation provisions and additional guidance on establishment of solicitation mailing lists, cancellation of invitations after opening, mistakes in bids, and contract award.

Subpart 3514.2—Solicitation of Bids

3514.201-6 Solicitation provisions.

(a) In addition to the provisions prescribed in FAR 14.201-6, the contracting officer shall insert in all invitations for bids the provisions at—

(1) 3552.214-70, Price—Sealed Bidding; and

(2) 3552.214-73, Caution—Sealed Bidding.

(b) The contracting officer shall insert the following provisions in all invitations for bids for construction. These provisions may also be used in invitations for bids for supplies or services if the contracting officer determines that their use is appropriate:

(1) 3552.214-71, Additional Data To Be Submitted.

(2) 3552.214-72, Rejection of Bids.

(c) The contracting officer shall insert the provision at 3552.214-74, All or None Award—Sealed Bidding, in invitations for bids for supplies or services if the contracting officer determines that award will be made on an "all or none" basis to one bidder for all items because of the nature of the items (e.g., supply items must interface or otherwise be fully compatible with each other; items covering services are so interrelated that it would be impracticable to split the award).

(d)(1) The contracting officer shall insert the provision at 3552.214-75, All or None Award—Sealed Bidding—Construction, in invitations for bids for construction work that is estimated to exceed $10,000 if the contracting officer determines:

(i) To require bidding on all items, and

(ii) That award will be made on an "all or none" basis to one bidder for all items.

(2) If the construction work is not estimated to exceed $10,000, the contracting officer shall use the Alternate I version of provision 3552.214-75.

(3) If the contracting officer determines that:

(i) The contract work, regardless of its estimated value, will be awarded to one bidder for all the work, and

(ii) Bidding on all items will not be required, the Alternate II version of provision 3552.214-75 is to be used.

[55 FR 7647, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3514.205 Solicitation mailing lists.

3514.205-1 Establishment of lists.

(a) Each Commission contracting activity shall establish solicitation mailing lists as required by FAR 14.205-1.

(b) In order to carry out the requirements of the Treaty to give preference to the acquisition of supplies and services obtainable from sources in the Republic of Panama, each Commission contracting activity shall develop solicitation lists of local companies which can provide such supplies or services.

Subpart 3514.4—Opening of Bids and Award of Contract

3514.404 Rejection of bids.

3514.404-1 Cancellation of invitations after opening.

(c) The Procurement Executive, upon recommendation of the cognizant HCA, is authorized to make the determinations prescribed in FAR 14.404-1(c) when an invitation is to be cancelled and all bids rejected after bid opening but prior to award.

(e)(1) The Procurement Executive, upon recommendation of the cognizant HCA, may authorize the contracting officer to complete the acquisition through negotiation in the determination to cancel the invitation for bids when the conditions in FAR 14.404-1(c)(6) or (7) apply.

3514.406 Mistakes in bids.

3514.406-3 Other mistakes disclosed before award.

The cognizant HCA is delegated the authority to make the administrative determinations in connection with mistakes in bids prior to award. This authority may not be redelegated. The General Counsel must review and concur with all determinations under FAR 14.406-3.

3514.406-4 Mistakes after award.

(b) The cognizant HCA is authorized to make determinations on mistakes in bids disclosed after award. The General Counsel must review and concur with all determinations made under FAR 14.406.4.

3514.407 Award.

3514.407-1 General.

(a) The contracting officer shall make a contract award to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only the price and price-related factors contained in FAR 14.201-8. Particular attention shall be paid in supply contracts to evaluation of transportation costs to ensure that the award is made to the lowest overall responsive and responsible bidder.

3514.407-6 Equal low bids.

(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:

(1) Preference shall be given to the bidder whose supplies or services are obtainable in the Republic of Panama;

(2) When two or more bidders offer supplies or services obtainable in Panama, preference shall be given to the bidder whose bid has a larger percentage of components of Panamanian origin;

(3) If two or more bidders remain equally low after application of paragraphs (a) (1) and (2) of this subsection, the tie-breaking procedures prescribed in FAR 14.407-6(b) shall be followed;

(4) The order of precedence established in FAR 14.407-6 (a) and (b).

(c) When award is made by using the priorities under this 3514.407-6, the contracting officer shall incorporate the written agreement prescribed in FAR 14.407-6(c) in the contract.

PART 3515—CONTRACTING BY NEGOTIATION

Sec.
3515.000 Scope of part.

Subpart 3515.4—Solicitation and Receipt of Proposals and Quotations

3515.407 Solicitation provisions.

Subpart 3515.5—Unsolicited Proposals

3515.500 Scope of subpart.
3515.502 Policy.
3515.503 General.
3515.504 Advance guidance.
3515.506 Agency procedures.
3515.506-1 Receipt and initial review.
3515.506-2 Evaluation.
3515.507 Contracting methods.
3515.508 Prohibitions.

Subpart 3515.8—Price Negotiation

3515.802 Policy.
3515.804 Cost or pricing data.
3515.804-2 Requiring certified cost or pricing data.
3515.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
3515.804-6 Procedural requirements.

Sec.

Subpart 3515.9—Profit

3515.902 Policy.

Authority: 40 U.S.C. 486(c).

Source: 55 FR 7648, Mar. 2, 1990, unless otherwise noted.

3515.000 Scope of part.

This part implements and supplements FAR part 15 by providing additional solicitation provisions and by providing Commission policies and procedures on unsolicited proposals, price negotiations, and profit.

Subpart 3515.4—Solicitation and Receipt of Proposals and Quotations

3515.407 Solicitation provisions.

(a) In addition to the provisions prescribed in FAR 15.407, the contracting officer shall insert in solicitations the provisions at—

(1) 3552.215-70, Price; and

(2) 3552.215-71, Caution.

(b) The contracting officer shall insert the provision at 3552.215-72, All or None Award, in solicitations for supplies or services if the contracting officer determines that award will be made on an "all or none" basis to one offeror for all items because of the nature of the items (e.g., supply items must interface or otherwise be fully compatible with each other; items covering services are so interrelated that it would be impracticable to split the award). This provision may also be used in solicitations for construction if the contracting officer determines that its use is appropriate.

Subpart 3515.5—Unsolicited Proposals

3515.500 Scope of subpart.

This subpart implements and supplements the policies and procedures governing unsolicited proposals prescribed in FAR subpart 15.5. It also establishes the Commission contact point for coordinating the receipt, evaluation, and disposition of unsolicited proposals.

3515.502 Policy.

It is the policy of the Commission t receive, review, and consider for acceptance unsolicited proposals, as tha term is defined in FAR 15.501 and f ther described in FAR 15.503(c). As indicated in FAR 15.502, such proposal may be accepted for sole source negotiation only when appropriate authority exists in FAR subpart 6.3 and wher all conditions in FAR 15.507(b) hav been complied with.

3515.503 General.

(f) Unsolicited proposals for the performance of services are, except as discussed in this paragraph, unacceptable as the performance of services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service, and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance, provided that such acceptance can be made in conformance with the policy in 3515.502.

3515.504 Advance guidance.

(a) It is not uncommon for sales representatives and engineers to approach field personnel of the Commission to discuss their products or proposals. Bureau Directors and Heads of Independent Units shall take the necessary steps to ensure that Commission employees do not make any commitments, explicit or implied, on behalf of the Commission to eventually procure such products or proposals. Whenever any person orally makes an "unsolicited proposal", Commission personnel shall inform the offeror that unsolicited proposals must be in writing and that further information should be obtained from the Commission's Procurement Executive or Assistant Procurement Executive before the offeror proceeds with the submission of a written proposal. Commission personnel may provide copies, if practicable, of FAR subpart 15.5 and subpart 3515.5 of this regulation to persons interested in submitting unsolicited proposals.

3515.506 Agency procedures.

(a) In order to allow the Commission sufficient time to evaluate the unsolicited proposal and negotiate any resultant contract, prospective contractors should submit their proposals, in triplicate, well in advance of the time they desire to commence their effort or activity. A minimum of six months advance submission is suggested (see FAR 15.505(c)(2)).

(b) The Procurement Executive is the Commission contact point to coordinate the receipt and handling of unsolicited proposals within the commission.

3515.506-1 Receipt and initial review.

(a) The Procurement Executive shall conduct an initial review of each unsolicited proposal to determine if it appears to (1) constitute a valid unsolicited proposal as described in FAR 15.503(c), and (2) meet the requirements contained in FAR 15.506-1(a). If so, the Procurement Executive shall acknowledge its receipt to the sender and initiate processing of the proposal for evaluation in accordance with 3515.506-2 below. If the proposal does not meet the requirements of FAR 15.506-1(a), or otherwise does not qualify as an unsolicited proposal, the Procurement Executive shall return it to the sender with appropriate comments.

3515.506-2 Evaluation.

(a) Promptly after receipt of an unsolicited proposal deemed to satisfy the requirements of 3515.506-1(a), the Procurement Executive shall forward the original and all copies to the cognizant contracting officer for further coordination of the technical evaluation of the proposal. The cognizant contracting officer shall (1) determine the appropriate Commission organization that would fund the acquisition (see FAR 15.507(b)(3)) in the event the unsolicited proposal would be acceptable for a negotiated award pursuant to FAR 15.507(b), and (2) forward a copy to that organization for technical evaluation. If more than one organization has a potential interest in the proposal, or should otherwise be included in the evaluation phase because of its technical expertise, copies of the proposal shall be circulated to each such office.

(b) Evaluating organizations shall complete their evaluations as quickly as practicable and forward them, together with all copies of the unsolicited proposal, to the cognizant contracting officer. Evaluations shall take into consideration the factors in FAR 15.506-2(a), shall be in writing, and shall include, in addition to a comprehensive technical analysis and conclusion(s), a recommendation as to the ultimate disposition of the proposal. When the recommendation is to accept the unsolicited proposal, the evaluation shall include the documentation required in FAR 15.507(b)(3).

3515.507 Contracting methods.

(a) If the unsolicited proposal is not recommended for acceptance after technical evaluation, the cognizant contracting officer shall return the proposal and all copies thereof to the offeror, citing the reasons why the proposal is not acceptable. A copy of the letter shall be furnished to the Procurement Executive.

(c) If the unsolicited proposal is acceptable as a basis for negotiation, the cognizant contracting officer shall:

(1) Obtain the concurrence of the General Counsel before proceeding with negotiations, and

(2) Advise the Procurement Executive in writing of such action.

3515.508 Prohibitions.

(b) All unsolicited proposals received by units of the Commission shall be treated "FOR OFFICIAL USE ONLY" and shall be protected from unauthorized disclosure. No copies shall be made except as authorized by the Procurement Executive or cognizant contracting officer, as appropriate. All Commission personnel who handle a proposal are responsible for safeguarding the information therein, and shall not disclose the information to unauthorized personnel within or outside of the Commission.

Subpart 3515.8—Price Negotiation

3515.802 Policy.

It is the policy of the Commission to obtain the cost or pricing data required pursuant to FAR 15.804 from all U.S. or foreign (including Panama) prime contractors and subcontractors.

3515.804 Cost or pricing data.

3515.804-2 Requiring certified cost or pricing data.

When determining the contract amount for purposes of applying the dollar threshold at FAR 15.804-2(a) for requesting certified cost or pricing data, the value of the contract shall include any priced options. Exercise of a priced option is not considered a price adjustment and does not require submission of cost or pricing data.

3515.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

All findings rendered pursuant to FAR 15.804-3 (b)(2)(iii) and (c)(8) shall be approved by the cognizant HCA with the concurrence of the General Counsel. The exemptions permitted under FAR 15.804-3(g) and the waivers permitted under FAR 15.804-3(i) shall be authorized by the cognizant HCA with the concurrence of the General Counsel.

3515.804-6 Procedural requirements.

For requests for proposals or modifications not exceeding $25,000, the contracting officer may require contractors to submit information for cost or price analysis on Panama Canal Form No. 6122, Cost Breakdown, at 3553.215.

Subpart 3515.9—Profit

3515.902 Policy.

(a) The Commission shall use a structured approach to determine the profit or fee prenegotiation objective in acquisition actions of $500,000 or more that require cost analysis based on the profit analysis factors in FAR 15.905.

(b) The following types of acquisitions are exempt from the requirements of the structured approach, but the contracting officer shall comply with FAR 15.905-1 when analyzing profit for these contracts or actions:

(1) All actions which do not require cost analysis;

(2) Architect-engineer contracts;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements; and

(6) Other professional services.

(c) In developing a profit or fee prenegotiation objective, the contracting officer shall comply with the requirements in FAR 15.903.

(d) When profit analysis is required, any amount proposed by the prospective contractor for the cost of money for facilities capital allowable under FAR 31.205-10 shall be deducted from the prenegotiation cost base objective before calculating the profit objective.

(e) The cognizant HCA is responsible for establishing procedures to ensure compliance with this subpart.

PART 3516—TYPES OF CONTRACTS

Sec.

3516.000 Scope of part.

Subpart 3516.3—Cost-Reimbursement Contracts

3516.301 General.
3516.301-3 Limitations.

Subpart 3516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3516.601 Time-and-materials contracts.
3516.603 Letter contracts.
3516.603-2 Application.
3516.603-3 Limitations.
3516.603-70 Information to be furnished when requesting authority to issue a letter contract.
3516.603-71 Approval for modifications to letter contracts.

Authority: 40 U.S.C. 486(c).

Source: 55 FR 7650, Mar. 2, 1990, unless otherwise noted.

3516.000 Scope of part.

This part implements and supplements FAR part 16. It provides Commission policies and procedures for preparation of determinations and findings authorizing use of cost-reimbursement contracts, and for use of time-and-materials and letter contracts.

Subpart 3516.3—Cost-Reimbursement Contracts

3516.301 General.

3516.301-3 Limitations.

(c) The following format shall be used and executed by the contracting officer as the determination and findings authorizing the use of a cost-reimbursement contract:

PANAMA CANAL COMMISSION

Determination and Findings

Authority to Use Cost-Reimbursement Contract

I hereby find that:

(1) The (Bureau/Division name) proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($\_\_\_\_\_\_\_\_) (if contract is CPFF type, insert, ("plus a fixed fee of ($________) which is ___ percent of the estimated cost exclusive of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to acquire supplies or services of the kind or quality required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

I hereby determine that:

On the basis of the above findings, it is impracticable to acquire supplies or services of the kind or quality required without the use of a (cost, cost-sharing, or cost-plus-a-fixed fee*) type of contract, or the (cost, cost-sharing, or cost-plus-a-fixed fee*) method of contracting is likely to be less costly than other methods.

Date ______________________________

____

(Signature)

*Contracting officer inserts appropriate type of contract.

The determination and findings for all cost-reimbursement and incentive/award fee type contracts shall be reviewed and approved by the HCA.

Subpart 3516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3516.601 Time-and-materials contracts.

(c) *Limitations.* The format prescribed in 3516.301-3(c) shall be used and executed by the contracting officer as the determination and findings authorizing the use of either a time-and-materials contract or a labor-hour contract, except that in lieu of the final paragraph insert the following:

I hereby determine that:

On the basis of the above findings, no other type of contract will suitably serve for the acquisition of the required supplies or services.

3516.603 Letter contracts.

3516.603-2 Application.

(a) It is the policy of the Panama Canal Commission to refrain from issuing letter contracts. Exceptions to this policy will be permitted only in those cases in which all matters of a substantive nature, such as statements of work, delivery schedules, and general and special clauses have been resolved and agreed upon. Exceptions to this policy must be approved by the Administrator.

3516.603-3 Limitations.

The cognizant HCA is designated to execute the prescribed determination that no other contract is suitable. However, if the cognizant HCA is to sign the letter contract as the contracting officer, the Procurement Executive shall execute the determination.

3516.603-70 Information to be furnished when requesting authority to issue a letter contract.

The following information should be included by the contracting officer in any memorandum requesting approval to issue a letter contract:

(a) Name and address of proposed contractor.

(b) Location where contract is to be performed.

(c) Contract number, including modification number, if possible.

(d) Brief description of work and services to be performed.

(e) Performance or delivery schedule.

(f) Amount of letter contract.

(g) Estimated total amount of definitized contract.

(h) Type of contract to be executed (fixed price, cost-reimbursement, etc.)

(i) Statement of the necessity and advantage to the Commission of the use of the proposed letter contract.

(j) Statement of the percentage of the estimated cost of the proposed acquisition that the obligation of funds represents. In those rare instances in which the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, a justification for that obligation must be included describing the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation must ensure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(k) Period of effectiveness of the proposed letter contract.

(l) Statement of any substantive matters that need to be resolved.

3516.603-71 Approval for modifications to letter contracts.

All letter contract modifications must be approved by the cognizant HCA responsible for the acquisition. Requests for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts and shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and approving official.

(d) Letter contract number and date issued.

(e) Complete justification as to why the letter contract cannot be definitized at this time.

(f) Complete justification as to why the level of funding must be increased.

(g) Complete justification as to why the period of effectiveness is increased, if applicable.

(h) If the funding of letter contracts is to be increased to more than 50 percent of the estimated cost of the acquisition, the information required by 3516.603-70(j) must be included.

PART 3517—SPECIAL CONTRACTING METHODS

Subpart 3517.2—Options

Sec.

3517.200 Scope of subpart.
3517.203 Solicitations.
3517.204 Contracts.
3517.207 Exercise of options.

Subpart 3517.5—Interagency Acquisitions Under the Economy Act

3517.500 Scope of subpart.
3517.501 Definitions.
3517.502 General.
3517.504 Ordering procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7651, Mar. 2, 1990, unless otherwise noted.

Subpart 3517.2—Options

3517.200 Scope of subpart.

This subpart does not apply to contracts for services involving:

(a) Construction, alteration, or repair of real property;

(b) Architect-engineer services;

(c) Automatic data processing equipment systems; and

(d) Telecommunication equipment and services.

However, it does not preclude the use of options in those contracts.

3517.203 Solicitations.

(g)(2) The use of options for increased quantities of supplies or services which exceed 50 percent of the base quantity specified in the contract for a particular period shall be approved by the cognizant HCA prior to issuing the solicitation. In the case of supplies, the 50 percent limitation applies only to contracts which have a base quantity of more than one.

3517.204 Contracts.

(e) The use of option periods which, when combined with the base contract period, results in a total contract period of performance exceeding twelve months shall be approved by the cognizant HCA prior to issuing the solicitation. In no event, however, shall the total of the base and option periods exceed sixty (60) months in duration.

3517.207 Exercise of options.

(h) The contracting officer, if the contract so provides, may, subject to the conditions in FAR 17.204(d) and FAR 32.703-2, exercise an option contingent upon the availability of funds. Under no circumstances shall any action be taken which could be construed as creating a legal liability on the part of the Commission until a formal notice of availability of funds in the form of a contract modification has been issued by the contracting officer.

Subpart 3517.5—Interagency Acquisitions Under the Economy Act

3517.500 Scope of subpart.

This subpart prescribes policies and procedures applicable to the use of Interservice Support Agreements and Memorandums of Understanding.

3517.501 Definitions.

Interservice Support Agreement (ISA) means an agreement entered into between the Panama Canal Commission and any other department or agency of the United States for the use of facilities, furnishing of supplies or services, or performance of functions. ISA's may be based upon Memorandums of Understanding.

Memorandum of Understanding (MOU) means the basic document which outlines host-tenant relationships. MOU's serve as the standard for relationships between host units and supporting or supported activities.

3517.502 General.

The General Services Director is the Commission official authorized to enter into ISA's. The Director, by written appointment, may delegate this authority to one or more contracting officers in the General Services Bureau. The determination and findings required by FAR 17.503 shall be made by the General Services Director or the appointee(s), as applicable.

3517.504 Ordering procedures.

(a) The procedures in FAR 17.504 shall apply to Commission ISA's.

(b) When the other agency to an ISA is a DOD activity, the DOD forms and format normally shall be followed.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 3519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 3519.2—Policies

Sec.
3519.201 General policy.
3519.202-3 Equal low bids.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7651, Mar. 2, 1990, unless otherwise noted.

Subpart 3519.2—Policies

3519.201 General policy.

(a) Any acquisition which requires the solicitation of bids, proposals, or quotes from sources within Panama and also from sources within the United States shall not be restricted by any United States statute that is inconsistent with Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty.

(d) The Chief, New Orleans Branch, Logistical Support Division, shall discharge the functions of the Small and Disadvantaged Business Utilization Specialist (SDBUS).

3519.202-3 Equal low bids.

In the event of equal low bids, contracts shall be awarded in the order of priority set forth in 3514.407-6.

PART 3520—LABOR SURPLUS AREA CONCERNS

Subpart 3520.1—General

Sec.
3520.102 General policy.
3520.103 Contract clause.

Subpart 3520.2—Set-asides

3520.201 Set-asides for labor surplus area concerns.
3520.201-1 Total set-asides.

Subpart 3520.3—Labor Surplus Area Subcontracting Program

3520.301 General.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7651, Mar. 2, 1990, unless otherwise noted.

Subpart 3520.1—General

3520.102 General policy.

Subject to the order of precedence in FAR 19.504, the Panama Canal Commission shall award appropriate contracts to eligible labor surplus area (LSA) concerns and encourage contractors to place subcontracts with LSA concerns only when all of the following circumstances exist:

(a) The acquisition is to be performed within the United States, its territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

(b) The concern, together with its first-tier subcontractors, will perform substantially in labor surplus areas as defined in FAR 20.101; and

(c) The value of the acquisition is estimated to exceed the small purchase limitation in FAR part 13.

3520.103 Contract clause.

(b) The contract clause at FAR 52.220-1, Preference for Labor Surplus Area Concerns, shall be included in solicitations and contracts only as prescribed by FAR 20.103(b) and under those conditions set forth in 3520.102.

Subpart 3520.2—Set-asides

3520.201 Set-asides for labor surplus area concerns.

3520.201-1 Total set-asides.

The contracting officer shall set aside the entire amount of an individual acquisition or class of acquisitions for LSA concerns only under those conditions set forth in 3520.102.

Subpart 3520.3—Labor Surplus Area Subcontracting Program

3520.301 General.

The provisions of FAR subpart 20.3 apply only under those conditions set forth in 3520.102.

PART 3522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.
3522.000 Scope of part.

Subpart 3522.1—Basic Labor Policies

3522.100 Scope of subpart.
3522.103 Overtime.
3522.103-4 Approvals.

Subpart 3522.2—Convict Labor

3522.270 Applicability.

Subpart 3522.3—Contract Work Hours and Safety Standards Act

3522.370 Applicability.

Subpart 3522.4—Labor Standards for Contracts Involving Construction

3522.402 Applicability.

Subpart 3522.6—Walsh-Healey Public Contracts Act

3522.603 Applicability.
3522.608 Procedures.
3522.608-3 Protests against eligibility.
3522.608-4 Award pending final determination.
3522.608-6 Postaward.

Subpart 3522.8—Equal Employment Opportunity

3522.803 Responsibilities.
3522.804 Affirmative action programs.
3522.804-2 Construction.
3522.805 Procedures.
3522.807 Exemptions.
3522.808 Complaints.
3522.809 Enforcement.
3522.810 Solicitation provisions and contract clauses.

Subpart 3522.10—Service Contract Act of 1965, as Amended

3522.1003 Applicability.

Subpart 3522.13—Special Disabled and Vietnam Era Veterans

3522.1302 Applicability.
3522.1303 Waivers.
3522.1306 Complaint procedures.

Subpart 3522.14—Employment of the Handicapped

3522.1402 Applicability.
3522.1403 Waivers.
3522.1406 Complaint procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7652, Mar. 2, 1990, unless otherwise noted.

3522.000 Scope of part.

This part prescribes—

(a) Labor laws of the United States and their application to acquisitions conducted by the Panama Canal Commission; and

(b) Contracting policy and procedures for the implementation of pertinent labor laws in contracts with United States and Panamanian business concerns. (See subpart 3525.8 for policies and procedures pertaining specifically to contracts with Panamanian business concerns or others to which Panamanian laws may apply.)

Subpart 3522.1—Basic Labor Policies

3522.100 Scope of subpart.

The provisions of FAR subpart 22.1 shall apply specifically to contracts with United States business concerns to the extent prescribed throughout FAR part 22.

3522.103 Overtime.

3522.103-4 Approvals.

(a) Overtime requests by contractors may be approved under the conditions contemplated in FAR 22.103-4(a). Such approvals are required under cost-reimbursement, time-and-materials, and labor-hour contracts since such contracts place substantial cost risk on the Government.

(b) The Commission officials for approval of contractor requests for overtime in cost-reimbursement contracts as contemplated in FAR 22.103-4 (a), (b), and (f) are the cognizant Heads of Contracting Activities.

Subpart 3522.2—Convict Labor

3522.270 Applicability.

As indicated at FAR 22.202, the policies and procedures in FAR subpart 22.2 are applicable only to contracts which are to be performed within any State, the District of Columbia, the

Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands. The policies and procedures do not apply to contracts which are to be performed within the Republic of Panama or within any other foreign country.

Subpart 3522.3—Contract Work Hours and Safety Standards Act

3522.370 Applicability.

As indicated at FAR 22.305, the policies and procedures in FAR subpart 22.3 shall not be applied to contracts to be performed solely within the Republic of Panama, other foreign countries, or within a territory under United States jurisdiction other than a State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331), American Samoa, Guam, Wake Island, and Johnston Island.

Subpart 3522.4—Labor Standards for Contracts Involving Construction

3522.402 Applicability.

(c) *Contracts to be performed outside the United States.* As indicated by paragraphs (a) through (d) at FAR 22.407, the requirements of FAR subpart 22.4 do not apply to contracts for construction to be performed within the Republic of Panama or within any other foreign country.

Subpart 3522.6—Walsh-Healey Public Contracts Act

3522.603 Applicability.

As indicated at FAR 22.603 and FAR 22.604-2, the requirements and procedures of FAR subpart 22.6 and this subpart 3522.6 do not apply to contracts for supplies that are manufactured in the Republic of Panama or elsewhere outside the United States, Puerto Rico or the Virgin Islands.

3522.608 Procedures.

3522.608-3 Protests against eligibility.

The contracting officer shall forward the determination of eligibility, after concurrence by legal counsel, to the cognizant Head of Contracting Activity (HCA) for referral to the Department of Labor (DOL) or to the Small Business Administration if the offeror is a small business.

3522.608-4 Award pending final determination.

(a) If an offeror's eligibility case is pending review by the DOL or SBA, the contracting officer shall obtain the concurrence of legal counsel and approval of the cognizant HCA prior to making an award.

3522.608-6 Postaward.

(c) In the event of a violation of a stipulation required under the Act, the contracting officer shall, with concurrence by legal counsel and approval by the cognizant HCA, notify the appropriate regional office of the DOL.

Subpart 3522.8—Equal Employment Opportunity

3522.803 Responsibilities.

(d) If the applicability of Executive Order 11246 and implementing regulations are questioned by any commercial firm or other entity with whom the Panama Canal Commission has contracted or contemplates contracting, the contracting officer shall route the matter to the cognizant HCA, who shall obtain the opinion of legal counsel.

3522.804 Affirmative action programs.

3522.804-2 Construction.

(b) The HCA having construction contract responsibility shall maintain and distribute a current list of geographical areas subject to affirmative action requirements to the principally affected contracting officers. The list may be obtained from the regional Office of Federal Contract Compliance Policy (OFCCP).

3522.805 Procedures.

(a) The contracting officer shall obtain a preaward clearance as required by FAR 22.805(a) (2), (3), and (5). Where, as contemplated in FAR 22.805(a)(7), there exists a potential delay in award of an urgent and critical contract, and where the OFCCP advises of its inability to timely complete the review, a written justification for award shall be forwarded to the cognizant HCA for approval of award without preaward clearance.

(b) The contracting officer shall obtain and maintain an adequate supply of the posters entitled "Equal Opportunity is the Law" for distribution to contractors when applicable.

3522.807 Exemptions.

(b) Panama Canal Commission contracts are exempt from the Equal Employment Opportunity provisions of Executive Order 11246 to the extent that work is performed outside the United States by employees who were not recruited within the United States. (See FAR 22.801 for the meaning of "United States" as used herein.)

(c) Requests for exemption pursuant to FAR 22.807(c) shall be submitted to the Director, OFCCP, through the cognizant HCA.

3522.808 Complaints.

Information regarding all complaints and subsequent referrals shall be forwarded to the cognizant HCA.

3522.809 Enforcement.

The Procurement Executive is designated to make the determinations that may be exercised against contractors pursuant to FAR 22.809.

3522.810 Solicitation provisions and contract clauses.

All solicitation provisions and contract clauses prescribed in FAR 22.810 are applicable to contracts awarded by the Panama Canal Commission unless an exemption exists or has been obtained in accordance with FAR 22.807 and 3522.807.

Subpart 3522.10—Service Contract Act of 1965, as Amended

3522.1003 Applicability.

As indicated at FAR 22.1003-2, the policies and procedures in FAR subpart 22.10 do not apply to service contracts to be performed in the Republic of Panama or elsewhere outside the United States. (See FAR 22.1001 for the meaning of "United States" as used herein.)

Subpart 3522.13—Special Disabled and Vietnam Era Veterans

3522.1302 Applicability.

Panama Canal Commission contracts are exempt from the provisions of the Vietnam Era Veterans Readjustment Assistance Act of 1972 to the extent that the work is performed outside the United States by employees who were not recruited in the United States. (See FAR 22.1308(a)(1) for the meaning of "United States" as used herein.)

3522.1303 Waivers.

(a) The Administrator of the Panama Canal Commission is the "agency head" or the "head of a civilian agency" for purposes of the provisions of FAR 22.1303 (a) and (b)(1), respectively.

(c) Requests for waivers shall be forwarded to the cognizant HCA for referral to the administrator for approval.

3522.1306 Complaint procedures.

The contracting officer shall forward written complaints to the cognizant HCA for subsequent referral to the Director, OFCCP.

Subpart 3522.14—Employment of the Handicapped

3522.1402 Applicability.

(a) Panama Canal Commission contracts are exempt from the Rehabilitation Act of 1973 to the extent that the work is performed outside the United States by employees who were not recruited within the United States. (See

FAR 22.1408(a)(1) for the meaning of "United States" as used herein.)

3522.1403 Waivers.

(a) The Administrator of the Panama Canal Commission is the "agency head" or the "head of a civilian agency" for purposes of the provisions of FAR 22.1403 (a) and (b)(1), respectively.

(c) Requests for waivers shall be forwarded through the cognizant HCA to the Administrator for approval.

3522.1406 Complaint procedures.

Complaints regarding administration of the Act shall be forwarded to the cognizant HCA prior to submission to the OFCCP.

PART 3524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 3524.1—Protection of Individual Privacy

Sec.
3524.102 General.

Subpart 3524.2—Freedom of Information Act

3524.270 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7653, Mar. 2, 1990, unless otherwise noted.

Subpart 3524.1—Protection of Individual Privacy

3524.102 General.

Personal information obtained by the agency to be used in determining an individual's right to a benefit, or to otherwise incur an obligation, will be solicited directly from the subject of the record to the extent practicable. The system manager responsible for the maintenance and dissemination of personal information about individuals shall ensure that the information is collected and disclosed in compliance with the provisions of the Privacy Act of 1974 and part 10 of 35 CFR, this agency's regulations implementing the Act.

Subpart 3524.2—Freedom of Information Act

3524.270 Procedures.

Freedom of Information Act (FOIA) requests for contractual information shall be processed in accordance with part 9 of 35 CFR.

(a) Upon receipt, all FOIA requests shall be forwarded immediately to the Agency Records Officer (Chief, Administrative Services Division) for acknowledgment and processing within the statutory time limitations as stipulated in the Act.

(b) Prior to release of any contractual information to FOIA requesters, the Agency Records Officer shall coordinate with other agency offices or officials having a substantial subject matter interest.

PART 3525—FOREIGN ACQUISITION

Sec.
3525.000 Scope of part.

Subpart 3525.1—Buy American Act—Supplies

3525.102 Policy.

Subpart 3525.2—Buy American Act—Construction Materials

3525.202 Policy.

Subpart 3525.3—Balance of Payments Program

3525.300-70 Applicability.
3525.302 Policy.

Subpart 3525.4—Purchases Under the Trade Agreements Act of 1979

3525.402 Policy.

Subpart 3525.670—Customs and Duties, Republic of Panama

3525.670-1 Policy.
3525.670-2 Procedures.

Subpart 3525.8—International Agreements and Coordination

3525.801 International agreements.
3525.801-70 Language.
3525.801-71 Choice of law.
3525.801-72 Immunity.
3525.801-73 Designated contractors.
3525.801-74 Panamanian preference.
3525.801-75 Customary local business usage.

Sec.
3525.801-70 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c); Article VIII of the Panama Canal Treaty of 1977 and Articles IX, XI, and XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7654, Mar. 2, 1990, unless otherwise noted.

3525.000 Scope of part.

This part provides policies and procedures related to the application of the Buy American Act, the Balance of Payments Act, and purchases under the Trade Agreements Act of 1979 to Commission acquisitions. This part also provides policies and procedures for the application of international agreements to Commission acquisitions.

Subpart 3525.1—Buy American Act—Supplies

3525.102 Policy.

The Buy American Act does not apply to purchases of supplies, or services that involve the furnishing of supplies, for use in the Republic of Panama because such use is outside the United States, as provided in FAR 25.102(a)(1).

[55 FR 7654, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

Subpart 3525.2—Buy American Act—Construction Materials

3525.202 Policy.

The Buy American Act does not apply to contracts for the construction, alteration, or repair of any public building or public work in the Republic of Panama. The Act applies only to acquisitions for use inside the United States, as provided in FAR 25.202.

Subpart 3525.3—Balance of Payments Program

3525.300-70 Applicability.

In accordance with Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty, the Balance of Payments provisions limiting purchase of foreign products or services shall not apply to purchases for use by the Commission of—

(a) Articles, materials, or supplies that are produced in Panama (mined, produced, or manufactured);

(b) End products, the largest percentage of which are components of Panamanian origin; and

(c) Services which are available in Panama.

3525.302 Policy.

(a) The cognizant HCA is the official designated to make the determination required by FAR 25.302(b)(3) that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forego filling it or to provide a domestic substitute.

(b)(6) The Procurement Executive is the official designated to make the determination, with the assistance of legal counsel, that the acquisition of foreign end products or services is required by a treaty or executive agreement between governments.

Subpart 3525.4—Purchases Under the Trade Agreements Act of 1979

3525.402 Policy.

(c) Pursuant to a delegation from the United States Trade Representative under the authority provided by section 302(b)(2) of the Trade Agreements Act, the Administrator of the Panama Canal Commission is authorized to waive, on a case-by-case basis, the purchasing prohibition of section 302(a)(1) of the Act. The Administrator has delegated this waiver authority to the Procurement Executive.

Subpart 3525.670—Customs and Duties, Republic of Panama

3525.670-1 Policy.

(a) Article XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty provides that all property imported into the Republic of Panama for the official use or benefit of the Commission, including that imported by its contractors or subcontractors in connection with the various activities authorized under said Agreement, shall be exempt from the payment of all customs duties or other import taxes and charges and from all license requirements.

(b) All property imported into the Republic of Panama free of customs duties and other taxes may be exported free of customs duties, export permits, export taxes, and other assessments. All property acquired in the Republic of Panama by, or in the name of, the Commission may be exported free of customs duties, export licenses, and other export taxes or charges.

3525.670-2 Procedures.

When requested by the contractor or its representative, the contracting officer will initiate a cargo certification document stating that the property being imported is for the official use or benefit of the Commission. The cargo certification document is then processed by the Cargo Documentation Section of the Commission's Administrative Services Division for presentation by the contractor or representative to the appropriate authorities in the Republic of Panama.

Subpart 3525.8—International Agreements and Coordination

3525.801 International agreements.

The Panama Canal Treaty and the Agreement in Implementation of Article III of the Treaty affect the contracting activities of the Commission. Contracting officers shall give particular attention to the provisions in these agreements that pertain to acquisition procedures, contractors' taxes, facilities, and other matters relating to contracting.

3525.801-70 Language.

(a) Solicitations and contracts shall be issued in the English language.

(b) All offers, correspondence and documents related to solicitations and contracts shall be submitted in the English language.

(c) Where inconsistencies between the terms of solicitations or contracts and any translation into another language occur, the English language meaning shall control.

3525.801-71 Choice of law.

All matters relating to the validity, construction, interpretation, performance, and enforcement of any contract awarded by the Commission shall be determined in accordance with the applicable Federal law of the United States.

3525.801-72 Immunity.

Under Article VIII of the Treaty, agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to the Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama, and their installations, official archives and documents, shall be inviolable.

3525.801-73 Designated contractors.

(a) *Definition.*

Designated contractors means:

(1) (i) Natural persons who are nationals or permanent residents of the United States, or (ii) Corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of such natural persons—

(A) To whom contracts are awarded by the Commission, and

(B) Who are so designated in writing by the Commission.

(2) The term also includes subcontractors of designated contractors:

(i) Who are nationals or permanent residents of the United States, or

(ii) Which are corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of United States nationals or permanent residents.

(3) Because Article XI of the Treaty's Implementing Agreement (see paragraph (b) of this subsection and 3502.101) imposes certain obligations and confers certain benefits on designated contractors, all of which are dependent upon their or their employees' physical presence in Panama, the term is understood to mean only those contractors and/or subcontractors that will perform all or a portion of

the contract work in the Republic of Panama. Such contractors are normally designated at the time of contract award.

(b) *Obligations and benefits.* Designated contractors are subject to the laws and regulations of the Republic of Panama except for certain obligations and benefits established in Article XI of the Agreement in Implementation of Article III of the Treaty. These obligations and benefits are cited below.

(1) The contractor must engage exclusively in activities related to the execution of the work for which the contractor has been contracted by the Commission or related to other works or activities authorized by the Republic of Panama.

(2) The contractor must refrain from carrying out practices which may constitute violations of the laws of the Republic of Panama.

(3) The contractor shall enter and depart from the territory of the Republic of Panama in accordance with procedures prescribed for United States citizen employees in Article XII of the Implementing Agreement.

(4) The contractor must obtain a document indicating his/her identity as a contractor, which the proper authorities of the United States shall issue when they are satisfied that the contractor is duly qualified. This certificate shall be sufficient to permit the contractor to operate under Panamanian law as a contractor of the United States. Nevertheless, the authorities of the Republic of Panama may require the registration of the appropriate documents to establish juridical presence in the Republic of Panama.

(5) The contractor shall not be obliged to pay any tax or other assessment to the Republic of Panama on income derived under a contract with the Commission, so long as the contractor is taxed in the United States at a rate substantially equivalent to the corresponding taxes and assessments of the Republic of Panama.

(6) The contractor may move freely within the Republic of Panama, and shall have exemptions from customs duties and other charges, as provided for United States citizen employees in the Implementing Agreement.

(7) The contractor may use public services and installations in accordance with the terms and conditions of Article XIII of the Implementing Agreement and, on a non-discriminatory basis, shall pay the Republic of Panama highway tolls and taxes on plates for private vehicles.

(8) The contractor shall be exempt from any taxes imposed on depreciable assets belonging to the contractor, other than real estate, which are used exclusively for the execution of contracts with the United States.

(9) The contractor may use the services and facilities provided for in Articles X and XVIII of the Agreement in Implementation of Article IV of the Panama Canal Treaty, to the extent such use is authorized by the United States; provided, however, that after five years from the entry into force of the Implementing Agreement, the use of military postal services by such contractors shall be limited to that related to the execution of contracts with the United States.

(c) *Notification of designation.* The contracting officer shall, through the Director, Office of Executive Administration, advise contractors that they are "designated contractors" within the meaning of Article XI of the Implementing Agreement and advise them to review their obligations thereunder. Such designations shall be communicated to the authorities of the Republic of Panama by the authorities of the United States. Contracting officers shall maintain current lists of "designated contractors" at all times.

(d) *Withdrawal of designation.* The Commission shall withdraw the designation of a contractor when any of the following circumstances occur:

(1) Completion or termination of the contract with the Commission.

(2) Proof that during the life of the contract such contractors have engaged in the Republic of Panama in business activities not related to their contracts with the United States nor authorized by the Republic of Panama.

(3) Proof that such contractors are engaged in practices which in the view of the Republic of Panama constitute

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serious violations of the laws of the Republic of Panama.

The authorities of the United States shall notify the authorities of the Republic of Panama whenever the designation of a contractor has been withdrawn. If, within sixty days after notification of the withdrawal of the designation of a contractor who entered the territory of the Republic of Panama in the capacity of a contractor, the authorities of the Republic of Panama require such contractor to leave its territory, the United States shall ensure that the Republic of Panama shall not incur any expense due to the cost of transportation.

(e) *Impact on svbcontractors, employees, and dependents.* The provisions of this 3525.801-73 shall similarly apply to the subcontractors and to the employees of the contractors and subcontractors and their dependents who are nationals or residents of the United States. These employees and dependents shall not be subject to the Panamanian Social Security system.

3525.801-74 Panamanian preference.

(a) Article IX of the Agreement in Implementation of Article III of the Treaty provides that:

> In procuring supplies and services, the Commission shall give preference to those obtainable in the Republic of Panama. Such preference shall apply to the maximum extent possible when such supplies and services are available as required, and are comparable in quality and price to those which may be obtained from other sources. For the comparison of prices there shall be taken into account the cost of transport to the Republic of Panama, including freight, insurance and handling, of the supplies and services which compete with Panamanian supplies and services. In the acquisition of goods in the Republic of Panama, preference shall be given to goods having a larger percentage of components of Panamanian origin.

(b) Part 3570 provides guidance on the implementation of the Panamanian preference provisions of the Treaty's Implementing Agreement.

3525.801-75 Customary local business usage.

In acquisitions conducted in the Republic of Panama, customary local business usage, where not inconsistent with the applicable Federal law of the United States, may be followed. When conflicts develop between local business usage and the requirements of the Federal Acquisition Regulation, the matter shall be referred to the Procurement Executive, who shall seek the opinion of legal counsel, as a deviation for processing as required by 3501.405 and FAR 1.405.

3525.801-76 Contract clauses.

As used in this subsection, the term "foreign" means any country other than the United States. The contracting officer shall insert the following clauses in solicitations and contracts, as indicated below:

(a) In lieu of FAR clause 52.225-14, Inconsistency Between English Version and Translation of Contract, the clause at 3552.225-70, Language, whenever foreign offers are anticipated or contracts are awarded to foreign contractors.

(b) The clause at 3552.225-71, Notice of Applicability of United States Federal Law, whenever foreign offers are anticipated or contracts are awarded to foreign contractors.

(c) The clause at 3552.225-72, Designated Contractors, whenever the contract work is to be performed in whole or in part in the Republic of Panama and offers are anticipated from, or contracts are awarded to, U.S. contractors.

(d) The clause at 3552.225-73, Responsibility for Observance of Laws, Orders, and Regulations, whenever the contract work is to be performed in whole or in part in the Republic of Panama.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 3527—PATENTS, DATA AND COPYRIGHTS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7656, Mar. 2, 1990, unless otherwise noted.

Subpart 3527.3—Patent Rights Under Government Contracts

3527.304-3 Contracts for construction work or architect-engineer services.

(b) The contracting officer shall insert the clause at 3552.227-70, Government Rights, in all solicitations and contracts for architect-engineer services or for construction involving architect-engineer services, except those that call for or can be expected to involve only "standard types of construction" to be built by previously developed equipment, methods, and processes. (See FAR 27.304-3(b) for the meaning of the term "standard types of construction".)

PART 3528—BONDS AND INSURANCE

Subpart 3528.1—Bonds

Sec.
3528.100 Scope of subpart.
3528.101 Bid or proposal guarantees.
3528.101-3 Contract clauses.
3528.102 Performance and payment bonds for construction contracts.
3528.102-1 General.
3528.102-3 Solicitation requirements.
3528.103 Performance and payment bonds for other than construction contracts.
3528.103-2 Performance bonds.
3528.103-3 Payment bonds.
3528.103-70 Contract clauses.

Subpart 3528.2—Sureties

3528.201 Requirements for sureties.
3528.202 Acceptability of corporate sureties.
3528.202-70 Corporate seals.

Subpart 3528.3—Insurance

3528.301 Policy.
3528.305 Overseas workers' compensation and war-hazard insurance.
3528.309 Contract clause for workers' compensation insurance.

Sec.
3528.370 Contract clause for special Panama insurance.

AUTHORITY: 40 U.S.C. 486(c); Article XVIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7656, Mar. 2, 1990, unless otherwise noted.

Subpart 3528.1—Bonds

3528.100 Scope of subpart.

Bid or proposal guarantees, performance bonds, and payment bonds in Panama Canal Commission acquisitions may be required in contracts for construction as that term is defined at FAR 36.102, and in contracts for other than construction as explained at FAR 28.103.

3528.101 Bid or proposal guarantees.

3528.101-3 Contract clauses.

(a) When a guarantee is required, the contracting officer shall insert the clause at 3552.228-70, Bid Guarantee Amount, in sealed bid solicitations and contracts, or the clause at 3552.228-75, Proposal Guarantee, in negotiated solicitations and contracts, as applicable.

(b) If the contract is to be negotiated, the contracting officer shall insert the clause at 3552.228-75, Proposal Guarantee, in lieu of the bid guarantee clause at FAR 52.228-1.

3528.102 Performance and payment bonds for construction contracts.

3528.102-1 General.

(a) The Miller Act (40 U.S.C. 270a-270f) requires performance and payment bonds for any construction contract (including contracts for alteration, or repair of any public building or public work) exceeding $25,000, except that this requirement may be waived by the contracting officer for work to be performed in a foreign country upon the finding contemplated in FAR 28.102-1(a)(1). It has been determined by the Panama Canal Commission General Counsel, however, that the contracting officer may also establish requirements for such bonds for lesser dollar value contracts when it has been determined that the financial protection against damages is in the best interests of the Government. Accordingly, the provisions of 3528.102-3 regarding solicitation requirements must be followed.

3528.102-3 Solicitation requirements.

When performance or payment bonds are required, the contracting officer shall insert the clauses at 3552.228-71, Bonds and Insurance, and 3552.228-72, Bonds, in the solicitation and contract.

3528.103 Performance and payment bonds for other than construction contracts.

3528.103-2 Performance bonds.

(a) Contracts for high dollar acquisitions of vital supplies, such as cargo lot shipments of Bunker C fuel oil, is another situation that may warrant a performance bond.

3528.103-3 Payment bonds.

(a) A payment bond may be considered to be in the Government's interest when substantial progress payments are made before delivery of end items starts (for example, in the acquisition of tugboats and dredges).

3528.103-70 Contract clauses.

(a) *Performance bonds.* When a performance bond for other than construction contracts is required pursuant to FAR 28.103-2(a), but a payment bond is not required, the contracting officer shall insert the clause at 3552.228-76, Performance Bond, in all such solicitations and contracts. If a payment bond is also required (see FAR 28.103-3(a) and 3528.103-3(a)), the contracting officer shall insert the clause at 3552.228-77, Performance and Payment Bonds, in lieu of clause 3552.228-76.

(b) *Payment bonds.* When a payment bond for other than construction contracts is required pursuant to FAR 28.103-3(a) and 3528.103-3(a), the contracting officer shall insert the clause at 3552.228-77, Performance and Payment Bonds, in all such solicitations and contracts.

Subpart 3528.2—Sureties

3528.201 Requirements for sureties.

(a) In addition to those acceptable forms of security enumerated in FAR 28.201, contracting officers may accept such Panamanian sureties as may be approved in accordance with 3528.202(b).

(b) Contracting officers may not preclude the use by any offeror of any type of security or surety permitted by FAR subpart 28.2 or this subpart.

[55 FR 7656, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3528.202 Acceptability of corporate sureties.

(b) The authority delegated to contracting officers in FAR 28.202(b) to determine the acceptability of sureties not appearing on Treasury Department Circular 570 for contracts performed in a foreign country is vested in the Chief Financial Officer of the Panama Canal Commission. The procedure for approving such sureties is prescribed in the Commission's Financial Systems Manual 99.333.

[55 FR 7656, Mar. 2, 1990. Redesignated and amended at 55 FR 38331, Sept. 18, 1990]

3528.202-70 Corporate seals.

(a) In the event that a "Corporate Seal," as required in the instructions for preparation of any standard form or document, is not used due to the dictates of custom, practice, or law within Panama or other foreign countries, such bonds shall be accepted provided the contracting officer is satisfied, with the concurrence of legal counsel, that the person signing the bond is authorized to bind the surety (see FAR 4.102).

(b) In the case of acquisitions conducted using the sealed bid method described in FAR part 14, bids which do not include required bid bonds must be rejected as nonresponsive except as provided in FAR 28.101-4. See also FAR 14.405 regarding minor informalities or irregularities in bids.

Subpart 3528.3—Insurance

3528.301 Policy.

(b) In addition to the requirements of FAR 28.301(b), designated contractors (see 3525.801-73(a)), as prescribed at paragraph 7 of Article XVIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977, shall, upon initiation of work or construction activities, obtain appropriate insurance to cover civil liabilities in the Republic of Panama that may arise as a result of acts or omissions done in the performance of official duty by their employees. The insurance coverage shall include coverage for the tortious conduct of their employees. Such insurance may be obtained from insurance companies licensed to engage in such business within the Republic of Panama.

3528.305 Overseas workers' compensation and war-hazard insurance.

(d) Pursuant to a waiver granted by the Secretary of Labor, effective January 22, 1980, the provisions of the Defense Base Act are not applicable to any public-work contract awarded by the Panama Canal Commission in the Panama Canal area with respect to non-U.S. citizen employees, i.e., any Panamanian or other foreign national, employed under such contracts. The waiver does not apply, however, to employees who are:

(1) Hired in the United States by any contractor;

(2) Residents of the United States; or

(3) Citizens of the United States.

The waiver was granted with the proviso that the non-U.S. citizen employees thus exempted from the provisions of the Defense Base Act will be provided workers' compensation benefits prescribed in the Panamanian Social Security System.

3528.309 Contract clause for workers' compensation insurance.

(a) In addition to FAR clause 52.228-3, Workers' Compensation Insurance (Defense Base Act), prescribed at FAR 28.309(a)(1), the contracting officer shall insert the clause at 3552.228-73, Non-U.S. Workers' Compensation Insurance, in all public-work solicitations and contracts in which the employment of Panamanian or other foreign nationals is anticipated (see 3528.305(d)).

3528.370 Contract clause for special Panama insurance.

The contracting officer shall insert the clause at 3552.228-74, Special Panama Insurance, in all public-work solicitations and contracts:

(a) Which are to be performed in whole or in part in the Republic of Panama, and

(b) For which offers are anticipated from, or contracts are awarded to, U.S. contractors.

PART 3529—TAXES

Subpart 3529.4—Contract Clauses

3529.402 Foreign contracts.
3529.402-1 Foreign fixed-price contracts.

AUTHORITY: 40 U.S.C. 486(c); Articles XI and XII of the Agreements in Implementation of Articles III and IV of the Panama Canal Treaty of 1977, respectively.

SOURCE: 55 FR 7657, Mar. 2, 1990, unless otherwise noted.

Subpart 3529.4—Contract Clauses

3529.402 Foreign contracts.

3529.402-1 Foreign fixed-price contracts.

(a) *Procedures regarding FAR clause 52.229-6.* In recognition of the fundamental purpose of paragraph 2(e) of Articles XI and XII of the Agreements in Implementation of Articles III and IV of the Panama Canal Treaty of 1977, respectively, representatives of the Governments of the United States and Panama approved an Agreement on Taxation of Contractors on August 6, 1986. This taxation agreement impacts on U.S. contractors in certain circumstances. In order to alert prospective contractors to this possibility, the following procedures shall apply regarding FAR clause 52.229-6:

(1) The contracting officer shall supplement FAR clause 52.229-6, Taxes—Foreign Fixed-Price Contracts, by inserting the following note at the end of the clause in all solicitations and

contracts, unless the acquisition is a small purchase under FAR part 13 that:

(i) Will not require the contractor's presence in Panama, or

(ii) Does not solicit U.S. offerors:

NOTE: If the Contractor is a U.S. contractor, such contractor is advised that, pursuant to a taxation agreement between the Governments of the United States and Panama, U.S. contractors and subcontractors, including their U.S. citizen or U.S. permanent resident employees, may be required to file tax returns with, as well as provide corresponding U.S. tax information to, the Government of Panama on income arising under or relating to Panama Canal Commission contracts. This requirement is applicable when the contractor, subcontractor, or individual employee is present in the Republic of Panama in connection with one or more Commission contracts for more than 90 calendar days during the relevant tax year. This description of the stated requirement is not intended, nor should it be construed, to be a legal analysis of the taxation agreement. The Commission assumes no responsibility or liability for a contractor's or individual's obligation under the taxation agreement, nor for the interpretation of such agreement. A copy of the taxation agreement will be provided to the contractor or prospective contractor upon request to the contracting officer.

(2) If clause 52.229-6 is incorporated by reference, rather than in full text, insert the note directly below the title of the clause.

(3) Include elsewhere in the body of the solicitation the following note to alert offerors that clause 52.229-6 has been supplemented. In supply and service solicitations, this note should normally be inserted in Section B following the blanks provided for offerors to insert line item prices. In construction solicitations, the note should normally be attached to Standard Form 1442 or inserted in the solicitation's Special Conditions. In small purchase acquisitions, the note is to be included in the document requesting prices or by separate attachment to the document. If a U.S. contractor wins the small purchase award, the note shall be incorporated either (i) in full text, or (ii) by reference, on the purchase order or other award document.

NOTE: Offerors' attention is directed to the note added at the end of clause 52.229-6, Taxes—Foreign Fixed-Price Contracts. The note is an advisory notice regarding possible tax obligations under certain circumstances of U.S. contractors, subcontractors, and their employees to the Government of Panama. If the circumstances appear to be applicable, offerors may obtain additional information by contacting the contracting office at the address or phone number provided elsewhere in this solicitation.

(4) If additional information regarding the taxation agreement is requested of Panama Canal Commission employees, either before or after award, the individual who receives the request shall promptly notify the contracting officer and the Office of General Counsel who shall determine, in conjunction with the Office of Executive Administration, the appropriate action to be taken.

(5) Contracting officers shall serve as the official liaison, for purposes of the taxation agreement, between offerors/contractors and the Commission. The taxation agreement provides for the classification of contractors into two categories, resident and nonresident, by representatives of the Governments of the United States and Panama according to criteria set forth in the agreement. The representative of the United States Government is the Assistant Director, Policy and Programs, Office of Executive Administration. Classifications, when confirmed by the two representatives, will be communicated to the respective contractors by the contracting officer.

PART 3531—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7658, Mar 2, 1990, unless otherwise noted.

Subpart 3531.2—Contracts with Commercial Organizations

3531.205-46 Travel costs.

(a) Fixed-price type contracts that provide for separate reimbursement of travel and per diem shall state that such reimbursement will not exceed rates established in applicable Federal Travel Regulations.

(b) The clause at 3552.231-70, Travel Costs, shall be included in contracts as described in paragraph (a) of this subsection.

PART 3532—CONTRACT FINANCING

Sec.
3532.000 Scope of part.

Subpart 3532.1—General

3532.111 Contract clauses.

Subpart 3532.4—Advance Payments

3532.402 General.
3532.407 Interest.

Subpart 3532.6—Contract Debts

3532.600 Scope of subpart.
3532.601 Definition.
3532.602 General.
3532.603 Applicability.
3532.608 Negotiation of contract debts.
3532.608-70 Procedures.
3532.610 Demand for payment of contract debt.

Subpart 3532.7—Contract Funding

3532.705 Contract clauses.
3532.705-1 Clauses for contracting in advance of funds.

Subpart 3532.8—Assignment of Claims

3532.802 Conditions.
3532.806 Contract clause.

Subpart 3532.9—Prompt Payment

3532.901 Applicability.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7658, Mar. 2, 1990, unless otherwise noted.

3532.000 Scope of part.

This part implements and supplements FAR part 32 and provides Commission policies and procedures for contract financing and other payment matters, including—

(a) Advance payments;

(b) Contract debts;

(c) Assignment of claims; and

(d) Prompt payment implementation.

Subpart 3532.1—General

3532.111 Contract clauses.

(a) (7) The clause at 3552.232-70, Contract Payments, in solicitations and contracts for construction when the contracting officer determines that the value of materials delivered to the work site may be taken into account in preparing the progress payment estimate.

(8) The clause at 3552.232-73, Invoices, in all solicitations and contracts except small purchases. The clause or a modified version of the clause may be used in small purchases.

Subpart 3532.4—Advance Payments

3532.402 General.

(e) (1) The Procurement Executive is responsible for approving findings and determinations supporting the use of advance payments and approving contract terms concerning advance payments. These approvals must have the concurrence of the General Counsel.

(2) The contracting officer shall coordinate proposed advance payment authorizations with the Accounting Division.

3532.407 Interest.

(d) The Procurement Executive is authorized to approve advance payments without interest.

Subpart 3532.6—Contract Debts

3532.600 Scope of subpart.

This subpart assigns responsibilities and provides procedures for the collection of contract debts, including collection of debts under contracts for the transportation of household goods.

3532.601 Definition.

Responsible official, as used in this subpart, means the contracting officer.

3532.602 General.

In addition to the examples cited in FAR 32.602, contract debts may include those arising from claims under contracts for the transportation of household goods.

3532.603 Applicability.

When the Commission withholds payments due a contractor to satisfy a contractor's debt to the Government, the Debt Collection Act of 1982 and FAR subpart 32.6 apply. As a claim arising under a Government contract, any offset is governed by the Contract Disputes Act of 1979.

3532.608 Negotiation of contract debts.

3532.608-70 Procedures.

The Commission shall adhere to the following procedures prior to withholding a payment due a contractor to satisfy a debt owed by the contractor.

(a) The Commission shall use all proper means available for collecting a contract debt as rapidly as possible. This includes direct communication to obtain full payment or to negotiate an appropriate settlement.

(b) If the contractor fails to respond expeditiously and in good faith to contacts from the contracting officer, and if justifiable under the contract, the contracting officer shall promptly make a unilateral determination of the amount the contractor owes the Commission. The unilateral debt determination is made when neither payment nor a settlement has been reached. The unilateral debt determination is issued to the contractor by the contracting officer as a final decision under the Contract Disputes Act.

(c) A demand for payment of the contract debt shall be made contemporaneously with the contracting officer's issuance of the unilateral debt determination to the contractor.

3532.610 Demand for payment of contract debt.

(b) Demands for payment shall include, in addition to those items listed in FAR 32.610(b), the following:

(1) The offer of an opportunity to inspect and copy the records of the Commission related to the debt, 31 U.S.C. 3716(a)(2).

(2) The offer of an opportunity of a review of the Commission's decision relating to the debt, 31 U.S.C. 3716(3).

(3) The offer of an opportunity to enter into an agreement with the Commission to repay the amount of the debt.

(c) With respect to contracts for the transportation of household goods, claims by employees and, in turn, by the Commission, must be processed in a timely manner. The usual commercial terms for bills of lading require that any claim be filed against the contractor within nine months of shipment delivery. Government bills of lading are subject to these same rules and conditions. FAR clause 52.247-23, which is included in contracts for the transportation of household goods, specifies that the contractors will be notified of any damages within a maximum of 45 days from date of delivery.

Subpart 3532.7—Contract Funding

3532.705 Contract clauses.

3532.705-1 Clauses for contracting in advance of funds.

In lieu of either of the clauses prescribed at FAR 32.705-1(a) and (b), the contracting officer may insert the clause at 3552.232-71, Availability of Funds, in solicitations and contracts—

(a) That are to be awarded in one fiscal year with performance to begin in the following fiscal year, or

(b) That are to extend into the following fiscal year, or

(c) In situations when the circumstances in paragraphs (a) and (b) of this subsection both apply.

Subpart 3532.8—Assignment of Claims

3532.802 Conditions.

(b) Panamanian firms may assign contracts to a local bank in accordance with recognized local banking practice.

3532.806 Contract clause.

(a) In addition to the clauses prescribed in FAR 32.806, the contracting officer may insert the clause at 3552.232-72, Presentation of Statement of Release from Claims, in solicitations and contracts when appropriate, unless the contract will prohibit the assignment of claims.

Subpart 3532.9—Prompt Payment

3532.901 Applicability.

In consonance with subpart 3570.1, Panamanian Preference, the Administrator has determined, pursuant to FAR 32.904, to extend coverage of the interest penalty provisions of FAR subpart 32.9 to contracts awarded to Commission vendors located in the Republic of Panama.

PART 3533—PROTESTS, DISPUTES, AND APPEALS

Sec.
3533.000 Scope of part.

Subpart 3533.1—Protests

3533.103 Protests to the agency.
3533.104 Protests to GAO.

Subpart 3533.2—Disputes and Appeals

3533.203 Applicability.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7659, Mar. 2, 1990, unless otherwise noted.

3533.000 Scope of part.

This part prescribes Commission policies and procedures for filing protests and for processing contract disputes and appeals.

Subpart 3533.1—Protests

3533.103 Protests to the agency.

(a) The cognizant Head of the Contracting Activity is the official designated to make the determination(s) required by FAR 33.103(a)(1), (2), or (3) whenever an award is contemplated notwithstanding the protest to the agency.

(c) (1) Protests to the Commission based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed with the contracting officer prior to bid opening or the closing date for receipt of initial proposals, or any extended bid opening or closing date for receipt of proposals.

(2) All other protests to the Commission shall be filed with the contracting officer not later than 10 working days after the basis of the protest is known or should have been known.

(d) The General Counsel shall review protests to the Commission as a matter of first priority, and advise the contracting officer expeditiously.

(e) The contracting officer shall decide protests to the Commission within 10 working days from receipt of a protest and promptly inform the protestor and other interested parties of that decision.

3533.104 Protests to GAO.

(a) *General.* Protests to the General Accounting Office (GAO) concerning Commission acquisitions shall be processed in accordance with FAR 33.104. The General Counsel shall prepare the report to GAO required at FAR 33.104(a)(5) and shall serve as the designated contact office for GAO. The contracting officer shall review protests to GAO as a matter of first priority, and shall advise, support, and furnish information to the General Counsel expeditiously.

Subpart 3533.2—Disputes and Appeals

3533.203 Applicability.

Pursuant to an interagency agreement between the Panama Canal Commission and the Corps of Engineers Board of Contract Appeals (ENGBCA), the ENGBCA will hear appeals from final decisions of Commission contracting officers issued pursuant to the Contract Disputes Act.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 3536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 3536.1—General

Sec.
3536.101 Applicability.
3536.103 Methods of contracting.

Subpart 3536.2—Special Aspects of Contracting for Construction

3536.201 Evaluation of contractor performance.
3536.203 Government estimate of construction costs.
3536.207 Pricing fixed-price construction contracts.
3536.207-70 Use of indefinite delivery contracts.
3536.209 Construction contracts with architect-engineer firms.
3636.270 Special aspects of contracting for construction in Panama.
3536.270-1 General.
3536.270-2 Special contract considerations.

Subpart 3536.3—Special Aspects of Sealed Bidding in Construction Contracting

3536.303 Invitations for bids.
3536.370 Additive items.
3536.371 Solicitation provisions.

Subpart 3536.5—Contract Clauses and Form

3536.570 Special Panama Canal Commission contract clauses.
3536.571 Special Panama Canal Commission form.

Subpart 3536.6—Architect-Engineer Services

3536.602 Selection of firms for architect-engineer contracts.
3536.602-2 Evaluation boards.
3536.602-4 Selection authority.
3536.602-5 Short selection processes for contracts not to exceed $10,000.
3536.604 Performance evaluation.
3536.605 Government cost estimate for architect-engineer work.
3536.606 Negotiations.
3536.606-70 Modifications.
3536.670 Government rights to plans, specifications, and drawings.

Authority: 40 U.S.C. 486(c).

Source: 55 FR 7660, Mar. 2, 1990, unless otherwise noted.

Subpart 3536.1—General

3536.101 Applicability.

(a) Construction, which includes alteration, maintenance, and repair of real property, and architect-engineer contracts are subject to the requirements in other parts of this regulation, which shall be followed when applicable.

(b) When a requirement in this part is inconsistent with a requirement in another part of this regulation, this part 3536 shall take precedence if the acquisition of architect-engineer services is involved.

3536.103 Methods of contracting.

(a) Notwithstanding the exception in FAR 36.103(a) for contracts to be performed outside the United States, construction in Panama shall be acquired using sealed bid procedures, unless one of the four conditions in FAR 6.401(a) cannot be met. In that event, the contracting officer shall document the contract file in accordance with FAR 6.401.

(b) Contracting officers shall acquire architect-engineer services by negotiation, and select sources in accordance with applicable law, FAR subpart 36.6, and subpart 3536.6 of this regulation.

Subpart 3536.2—Special Aspects of Contracting for Construction

3536.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* The authorized representative of the contracting officer (COR) shall prepare the contractor performance report prescribed in FAR 36.201 within two weeks after final acceptance of the work or contract termination. Prior to submitting any report of unsatisfactory performance to the reviewing official, the COR shall advise the contractor of any proposed unsatisfactory rating and include any written comments from the contractor regarding such rating in the report (see FAR 36.201(a)(3)).

(b) *Review of performance reports.* The contracting officer shall review each performance report.

(c) *Distribution and use of performance reports.* Information from the performance report shall not be released outside of the Commission, except to other Government agencies at their written request, and on condition that the information will not be made available outside the Government. Requests from non-Government sources for information from performance reports shall be processed in accordance with 35 CFR part 9.

3536.203 Government estimate of construction costs.

(c) The overall amount of the Government's estimate shall not be disclosed prior to award under any circumstance to persons other than Commission personnel whose official duties, as determined by the contracting officer, require knowledge of the estimate.

3536.207 Pricing fixed-price construction contracts.

3536.207-70 Use of indefinite-delivery contracts.

Any of the forms of indefinite-delivery contracts described in FAR subpart 16.5 may be used to contract for construction when deemed appropriate by the contracting officer.

3536.209 Construction contracts with architect-engineer firms.

No contract for construction shall be awarded to the firm, or its subsidiaries or affiliates, that designed the project except with the approval of the Head of Contracting Activity.

3536.270 Special aspects of contracting for construction In Panama.

3536.270-1 General.

In contracts which are entered into with Panamanian or other foreign contractors for performance in Panama, the term "United States" shall appear before the word "Government."

3536.270-2 Special contract considerations.

When construction is to be performed in the Republic of Panama by designated United States contractors, Panamanian contractors, or others, the solicitation and contract should include references to the applicable laws, regulations, treaties, and agreements of the United States and the Republic of Panama (see subpart 3525.8) relating to:

(a) The duty-free importation of material and equipment;

(b) The payment of taxes applicable to contractors, personnel, materials, and equipment (see parts 3525 and 3529);

(c) The applicability of workmen's compensation laws and other labor laws to citizens of the United States, citizens of Panama, and citizens of other countries (see subpart 3528.3);

(d) The provision of utility services;

(e) The provision of Commission or Government-owned materials or services;

(f) The disposition of surplus materials and equipment;

(g) The need for civil liability insurance for employees of contractors and subcontractors (see 3528.301);

(h) The handling of claims and litigation;

(i) The requirements for bid or proposal guarantees, performance bonds, and payment bonds (see subpart 3528.1);

(j) Acceptability of sureties not listed in Treasury Department Circular 570 (see subpart 3528.2);

(k) Consideration of Panamanian preference in accordance with part 3570;

(l) Any other special solicitation provisions prescribed in subpart 3536.3; and

(m) Any other problems which can be foreseen and appropriately resolved contractually.

Subpart 3536.3—Special Aspects of Sealed Bidding in Construction Contracting

3536.303 Invitations for bids.

3536.370 Additive items.

Prior to the issuance of an invitation for bids, the contracting officer shall ascertain that adequate funds have been certified as being available for the proposed acquisition. However, if funds appear to be insufficient for all features of the Government's requirement, the contracting officer shall insert in the invitation a solicitation provision for a base bid and one or more additive items, as prescribed at 3536.371(a) (7) or (8).

3536.371 Solicitation provisions.

(a) The contracting officer shall insert the following provisions in invitations for bids for construction when applicable:

(1) The provision at 3552.214-70, Price—Sealed Bidding, as prescribed at 3514.201-6(a)(1);

(2) The provision at 3552.214-71, Additional Data To Be Submitted, as prescribed at 3514.201-6(b)(1);

(3) The provision at 3552.214-72, Rejection of Bids, as prescribed at 3514.201-6(b)(2);

(4) The provision at 3552.214-73, Caution—Sealed Bidding, as prescribed at 3514.201-6(a)(2);

(5) The provision at 3552.214-75, All or None Award—Sealed Bidding—Construction, as prescribed at 3514.201-6(d);

(6) The provision at 3552.236-70, Mailing of Correspondence and Bids, in all invitations for bids for construction;

(7) The provision at 3552.236-71, Additive Items, in invitations for bids for construction that contain one or more additive bid items to be awarded with the base bid item in the numerical order of priority that the additive bid items appear in the bid schedule within the funds available;

(8) The provision at 3552.236-71, Additive Items—Alternate I, in invitations for bids for construction that contain one or more additive bid items to be awarded with the base bid item in any combination within the funds available; and

(9) The provision at 3552.236-72, Cost Limitation, in invitations for bids for construction that contain one or more items subject to statutory cost limitations, except when a waiver has been granted pursuant to FAR 36.205.

(b) The contracting officer shall insert the following provisions in negotiated solicitations for construction when applicable:

(1) The provision at 3552.215-70, Price, as prescribed at 3515.407(a)(1);

(2) The provision at 3552.215-71, Caution, as prescribed at 3515.407(a)(2); and

(3) The provision at 3552.215-72, All or None Award, as prescribed at 3515.407(b).

(c) The contracting officer shall insert the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure, in invitations for bids and negotiated solicitations for construction when applicable, as prescribed at 3509.508-1.

Subpart 3536.5—Contruct Clauses and Form

3536.570 Special Panama Canal Commission contract clauses.

The contracting officer shall insert the following clauses in solicitations and contracts for construction when applicable:

(a) The clause at 3552.225-70, Language, as prescribed at 3525.801-76(a);

(b) The clause at 3552.225-71, Notice of Applicability of United States Federal Law, as prescribed at 3525.801-76(b);

(c) The clause at 3552.225-72, Designated Contractors, as prescribed at 3525.801-76(c);

(d) The clause at 3552.225-73, Responsibility for Observance of Laws, Orders, and Regulations, as prescribed at 3525.801-76(d);

(e) The clause at 3552.228-70, Bid Guarantee Amount, or the clause at 3552.228-75, Proposal Guarantee, as prescribed at 3528.101-3(a). If the proposal guarantee clause is used, the bid guarantee clause at FAR 52.228-1 shall not be used (see 3528.101-3(b));

(f) The clause at 3552.228-71, Bonds and Insurance, as prescribed at 3528.102-3;

(g) The clause at 3552.228-72, Bonds, as prescribed at 3528.102-3;

(h) In addition to FAR clause 52.228-3, Workers' Compensation Insurance (Defense Base Act), the clause at 3552.228-73, Non-U.S. Workers' Compensation Insurance, as prescribed at 3528.309(a);

(i) The clause at 3552.228-74, Special Panama Insurance, as prescribed at 3528.370;

(j) In addition to FAR clause 52.232-5, Payments Under Fixed-Price Construction Contracts, the clause at 3552.232-70, Contract Payments, as prescribed at 3532.111(a)(7), the clause at 3552.232-72, Presentation of Statement of Release from Claims, as prescribed at 3532.806(a), and the clause at 3552.232-73, Invoices, as prescribed at 3532.111(a)(8);

(k) The clause at 3552.236-73, Scope of Work, in all solicitations and contracts for construction;

(l) In addition to FAR clause 52.236-10, Operations and Storage Areas, the clause at 3552.236-74, Work Sites, Yards, Shops, and Offices, when a fixed-price construction contract is contemplated;

(m) The clause at 3552.236-75, Work Time Limitations, in all solicitations and contracts for construction;

(n) In lieu of FAR clause 52.236-13, Accident Prevention, insert the clause at 3552.236-76, Accident Prevention, when a fixed-price construction contract is contemplated;

(o) The clause at 3552.236-77, Working in Confined Spaces, when the contracting officer anticipates that the contractor may have to work in confined or enclosed spaces;

(p) The clause at 3552.236-78, Safety Sign, when the contracting officer determines that the location of the work site warrants its inclusion;

(q) The clause at 3552.236-79, Protection of Material and Work, in all solicitations and contracts for construction;

(r) The clause at 3552.236-80, Toilet Facilities, when the contracting officer determines that the location of the work site warrants its inclusion;

(s) The clause at 3552.236-81, Drinking Water, when the contracting officer determines that the location of the work site warrants its inclusion;

(t) In addition to FAR clause 52.236-15, Schedules for Construction Contracts, the clause at 3552.236-82, Contract Bid Breakdown, when a fixed-price construction contract is contemplated and the period of actual work performance is expected to exceed 60 days;

(u) In addition to FAR clause 52.236-21, Specifications and Drawings for Construction, and FAR clause 52.236-5, Material and Workmanship, the clauses at: 3552.236-83, Descriptive Data and Correspondence, 3552.236-84, Instruction Books, and 3552.236-85, Record Drawings, when a fixed-price construction contract is contemplated;

(v) The clause at 3552.236-86, Restricted Areas, when the contracting officer anticipates that any portion of the contract work may have to be performed in a restricted area;

(w) The clause at 3552.243-70, Modification Proposals—Price Breakdown, as prescribed at 3543.205;

(x) The clause at 3552.244-70, Subcontractors, in all solicitations and contracts for construction;

(y) The clause at 3552.236-87, Surplus Space, in all solicitations and contracts for construction. The clause may also be used in solicitations and contracts for supplies or services if the contracting officer determines that its use is appropriate.

(z) The clause at 3552.209-71, Organizational Conflict of Interest, as prescribed at 3509.508-2.

3536.571 Special Panama Canal Commission form.

Panama Canal Form 3062, Submittal Data For Approval, shall be used by contractors as a transmittal document when data and/or samples are to be submitted for the contracting officer's approval pursuant to FAR clause 52.236-5 or clause 3552.236-83 of this regulation.

Subpart 3536.6—Architect-Engineer Services

3536.602 Selection of firms for architect-engineer contracts.

3536.602-2 Evaluation boards.

(a) The Panama Canal Commission Architect-Engineer Evaluation Board is established as a central board within the Commission under authority delegated to the Director, Engineering and Construction Bureau. The Board shall perform all Commission architect-engineer evaluations, data collection, and files maintenance. The Commission Board shall be composed of not less than three nor more than five voting members and one non-voting advisory member from the contracting office. The following constitutes the minimum composition of the Board:

(1) Member and Chairman—A designee of the Chief, Engineering Division;

(2) Member—A professional engineer or architect from a division of one of the Commission's other bureaus, to be designated by the Chairman;

(3) Member—A program official initiating the requirement or a designated representative; and

(4) Advisory Member—A contracting officer or representative.

(b) The Chief, Engineering Division may appoint additional voting members as may be appropriate for a particular project.

(c) In the event of an emergency or extended absence, a member may designate, in writing, with the concurrence of the Chairman, an alternate experienced in architecture, engineering, or construction to serve in the member's absence.

(d) The duties of the advisory member shall include, but not be limited to, assuring that—

(1) The criteria set forth in the public notice are applied in the evaluation process; and

(2) Actions taken during the evaluation process do not compromise subsequent procurement actions.

3536.602-4 Selection authority.

The Director, Engineering and Construction Bureau shall serve as the Commission's selection authority for the evaluation board.

3536.602-5 Short selection processes for contracts not to exceed $10,000.

Both short selection processes permitted by FAR 36.602-5 are authorized.

3536.604 Performance evaluation.

Evaluation of architect-engineer contracts shall be in accordance with the procedures prescribed in 3536.201, except that SF 1421, Performance Evaluation (Architect-Engineer), shall be used in lieu of SF 1420, and that a copy of the performance evaluation shall be provided to the Architect-Engineer Evaluation Board for its files pursuant to FAR 36.604(c).

3536.605 Government cost estimate for architect-engineer work.

(b) The overall amount of the Government's cost estimate shall not be disclosed under any circumstance to persons other than Government personnel whose official duties, in the judgment of the contracting officer, require knowledge of the estimate.

3536.606 Negotiations.

(a) Negotiations shall be conducted with the first selected architect-engineer until a price which is fair and reasonable and not in excess of the Government estimate, revised to correct errors of fact or judgment, has been obtained. When the negotiations result in a price in excess of the Government estimate, as revised, the contracting officer shall terminate the negotiations and request a proposal from the architect-engineer next in order of preference.

(1) In no event shall a contract for architect-engineer services for the preparation of designs, plans, drawings and specifications exceed the statutory limitation of six percent (6 percent) of the estimated construction costs of the project. If the contract also covers any type of services other than the preparation of designs, plans, drawings and specifications, the part of the contract price for such other services shall not be subject to the six percent (6 percent) limitation.

3536.606-70 Modifications.

When a modification involves work not initially included in the contract, the limitation on the total contract price set forth in 3536.606(a)(1) is applicable, as applied to the revised total estimated construction costs. When redesign is required and the contract is modified, the following method shall be used to insure that the six percent (6 percent) statutory limitation is not exceeded:

(a) The estimated construction cost of the redesigned features will be added to the original estimated construction cost;

(b) The contract cost for the original design will be added to the contract cost for redesign; and

(c) The total contract design cost obtained by paragraph (b) of this subsection will be divided by the total construction cost obtained by paragraph (a) of this subsection. The resulting percentage may not exceed the six percent (6 percent) statutory limitation.

3536.670 Government rights to plans, specifications, and drawings.

All solicitations and contracts for architect-engineer services or for construction involving architect-engineer services, except those involving "standard types of construction", shall contain the clause at 3552.227-70, Government Rights, as prescribed at 3527.304-3(b).

PART 3537—SERVICE CONTRACTING

Sec.
3537.000 Scope of part.

Subpart 3537.1—Service Contracts—General

3537.102 Policy.
3537.104 Personal services contracts.
3537.104-70 Procedures.

Subpart 3537.2—Advisory and Assistance Services

3537.200 Scope of subpart.
3537.202 Policy.
3537.204 Exclusions.
3537.206 Requesting activity responsibilities.
3537.206-70 Procedures.
3537.270 Duration.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7662, Mar. 2, 1990, unless otherwise noted.

3537.000 Scope of part.

This part implements FAR part 37 and provides additional Commission policies and procedures for the acquisition of personal and nonpersonal services, including advisory and assistance services.

Subpart 3537.1—Service Contracts—General

3537.102 Policy.

(a) The Commission's policy regarding the contracting out of commercial services is set forth at 3507.301.

3537.104 Personal services contracts.

(b) Authority for the acquisition by contract of the personal services of experts and consultants is found at 5 U.S.C. 3109 which provides that, when authorized by an appropriation or other statute, the head of an agency may acquire by contract the temporary (not to exceed one year) or intermittent services of experts or consultants. For the purpose of this section, the terms "experts" and "consultants" are not interchangeable. Consequently, their meanings are distinguishable from the meaning of the collective term "Individual experts and consultants" at FAR 37.203(a). As used herein, an "expert" is an individual who is a recognized professional or highly skilled practitioner normally used to perform or supervise an operating function, rather than to provide advisory or consulting services. A "consultant", as used herein, is an individual possessing special, current knowledge or skill who primarily serves in an advisory capacity in a particular field, rather than in the performance or supervision of an operating function. Acquiring the personal services of individual experts or consultants shall be subject to the limitations applicable to advisory and assistance services at FAR 37.202(c). In addition, the services of individual experts and consultants shall be acquired through personal services contracts only—

(1) When the services required cannot be obtained by appointment in

accordance with standard Commission personnel procedures, and

(2) If the nature of the duties to be performed is temporary (not more than one year) or intermittent (not cumulatively more than 130 days in one year). Accordingly, no such contract shall be entered into for longer than one year at a time.

3537.104-70 Procedures.

Requests for the acquisition of personal services should include:

(a) A description of the services to be performed;

(b) Name and address of the person or firm;

(c) Background material to show the unique qualifications of such person or firm to accomplish the requirement;

(d) Place where the duties are to be performed and the period of service;

(e) The estimated cost; and

(f) Determinations that:

(1) It is not feasible to obtain personnel with the necessary skills through standard Commission personnel appointment procedures;

(2) A nonpersonal services contract is not practicable; and

(3) Existing staffing is inadequate to furnish the services.

Subpart 3537.2—Advisory and Assistance Services

3537.200 Scope of subpart.

This subpart provides additional policy and management controls for the acquisition of personal and nonpersonal advisory and assistance services.

3537.202 Policy.

(d) The acquisition of advisory and assistance services shall conform to the Competition in Contracting Act of 1984. Preference shall, however, be given to sources located in the Republic of Panama when the services are available as required and are comparable in quality and price to those which may be obtained from other sources (see part 3570). However, see subpart 3503.6 concerning contracts with current or former Commission employees.

3537.204 Exclusions.

In addition to the exclusions or exemptions identified at FAR 37.204, the services of arbitrators for the resolution of labor disputes are exempted from the definition of advisory and assistance services. As authorized by section 7121 of the Federal Service Labor-Management Relations Act, 5 U.S.C. 7121, the procedure for the contracting of arbitrators shall be governed by the negotiated grievance procedure set forth in the individual collective bargaining agreements between the Commission and the various certified representatives (i.e., unions).

3537.206 Requesting activity responsibilities.

(c) Requests for the acquisition of advisory and assistance services shall include the documentation required at FAR 37.206 (a), (b), and (d), and shall be prepared by the initiating bureau director or head of independent unit and forwarded to the Administrator for approval, through, in turn, the Personnel Director; General Counsel; Chief Financial Officer; and the General Services Director for their review and concurrence. Before the proposal is routed to the Administrator, the General Services Director will add the cognizant contracting officer's determination as to whether or not the requested acquisition constitutes advisory and assistance services as described in FAR subpart 37.2. As mandated by FAR 37.207, the contracting officer's determination shall be final.

[55 FR 7662, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3537.206-70 Procedures.

(a) When a request has been approved pursuant to 3537.206(c), the initiating bureau director or head of independent unit shall—

(1) Forward all papers to the cognizant contracting officer for processing the contract action. If not already included in the request for approval, the forwarding official shall provide the contracting officer with a work statement that is specific and complete, including: a detailed description of services to be performed; tne place where the services are to be performed; the

period of performance; the names and addresses of potential contractors (if applicable); and any other information the contracting officer considers to be pertinent.

(2) Coordinate with the Director, Office of Executive Administration or the contracting officer, as applicable, to obtain certification as a Panama Canal Commission designated contractor, entry/exit permits, identification cards, and any other required legal documents.

(3) Prepare replies to all inquiries from the General Accounting Office, the Office of Management and Budget, and the Congress, in coordination with the Personnel Director, Chief Financial Officer, General Counsel and the contracting officer, as may be necessary.

(b) At the conclusion of the contract, the initiating bureau director or head of independent unit shall furnish to the contracting officer the written evaluation required at FAR 37.205.

3537.270 Duration.

No contract for advisory and assistance services shall be entered into for longer than one year at a time. In unusual circumstances, and when approved by the Administrator, options for additional one-year extensions may be used when the need for continuity of services carries beyond a one-year period. In no case shall the total period under a specific contract exceed the basic year plus four additional optional years.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 3542—CONTRACT ADMINISTRATION

Authority: 40 U.S.C. 486(c).

Source: 55 FR 7663, Mar. 2, 1990, unless otherwise noted.

Subpart 3542.12—Novation and Change-of-Name Agreements

3542.1200-70 Policy.

When "CORPORATE SEALS," as required in the instructions for preparation and execution of novation agreements in FAR 42.1204 and in agreements to recognize contractor's change of name in FAR 42.1205, are not used due to the dictates of custom, practice, or law within the Republic of Panama or other foreign countries, the contracting officer may execute such agreements, provided the contracting officer, with the concurrence of legal counsel, is satisfied that the persons signing such agreements are authorized to bind their companies.

PART 3543—CONTRACT MODIFICATIONS

Authority: 40 U.S.C. 486(c).

Source: 55 FR 7664, Mar. 2, 1990, unless otherwise noted.

Subpart 3543.2—Change Orders

3543.205 Contract clauses.

The contracting officer shall insert the clause at 3552.243-70, Modification Proposals—Price Breakdown, in all solicitations and contracts for construction.

PART 3547—TRANSPORTATION

Subpart 3547.3—Transportation in Supply Contracts

Sec.
3547.306 Transportation factors in the evaluation of offers.
3547.370 Solicitation provision.

Authority: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

Source: 55 FR 7664, Mar. 2, 1990, unless otherwise noted.

Subpart 3547.3—Transportation in Supply Contracts

3547.306 Transportation factors in the evaluation of offers.

For purposes of evaluating comparability of costs of supplies obtainable in the Republic of Panama with those obtainable from other sources, pursuant to the Panamanian preference provisions of the Panama Canal Treaty's Implementing Agreement (see part 3570), consideration shall be given to transportation costs to the Republic of Panama, including freight, insurance and handling of supplies.

3547.370 Solicitation provision.

The contracting officer shall insert the provision at 3552.247-70, Evaluation of Delivery Terms in Contract Awards, in solicitations that include alternate terms of delivery, i.e., f.o.b. destination (New Orleans) and c.i.f. destination (Panama).

PART 3551—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 3551.1—Contractor Use of Government Supply Sources

Sec.
3551.102 Authorization to use Government supply sources.
3551.103 Ordering from Government supply sources.

Authority: 40 U.S.C. 486(c).

Source: 55 FR 7664, Mar. 2, 1990, unless otherwise noted.

Subpart 3551.1—Contractor Use of Government Supply Sources

3551.102 Authorization to use Government supply sources.

(a) When a contractor is performing one of the types of contracts specified in FAR 51.101, the contracting officer shall consider whether to allow the contractor to use Government supply sources. In addition to the factors listed for consideration at FAR 51.102(a), the contracting officer shall consider whether—

(1) Materials necessary to the performance of the contract are not available locally except at Government sources; and

(2) Materials, though available to the contractor, require such a long lead time for delivery that contractor performance is threatened if Government sources are not used.

(e)(4) In those instances where contractor-furnished equipment and materials required by a contract have been authorized by the contracting officer to be obtained through Government sources as Government-furnished equipment and materials, for reasons established by FAR part 51, the contracting officer shall negotiate a change to the contract reducing the price by the commercial cost plus transportation costs.

3551.103 Ordering from Government supply sources.

(b) "Contracting agency" as used in FAR 51.103(b) shall mean the cognizant Commission contracting officer.

SUBCHAPTER H—CLAUSES AND FORMS

PART 3552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 3552.2—Texts of Provisions and Clauses

Sec.

3552.209-70 Organizational Conflict of Interest Certification/Disclosure.
3552.209-71 Organizational Conflict of Interest.
3552.210-70 Brand Name Products or Equal.
3552.214-70 Price—Sealed Bidding.
3552.214-71 Additional Data To Be Submitted.
3552.214-72 Rejection of Bids.
3552.214-73 Caution—Sealed Bidding.
3552.214-74 All or None Award—Sealed Bidding.
3552.214-75 All or None Award—Sealed Bidding—Construction.
3552.215-70 Price.
3552.215-71 Caution.
3552.215-72 All or None Award.
3552.225-70 Language.
3552.225-71 Notice of Applicability of United States Federal Law.
3552.225-72 Designated Contractors.
3552.225-73 Responsibility for Observance of Laws, Orders, and Regulations.
3552.227-70 Government Rights.
3552.228-70 Bid Guarantee Amount.
3552.228-71 Bonds and Insurance.
3552.228-72 Bonds.
3552.228-73 Non-U.S. Workers' Compensation Insurance.
3552.228-74 Special Panama Insurance.
3552.228-75 Proposal Guarantee.
3552.228-76 Performance Bond.
3552.228-77 Performance and Payment Bonds.
3552.231-70 Travel Costs.
3552.232-70 Contract Payments.
3552.232-71 Availability of Funds.
3552.232-72 Presentation of Statement of Release From Claims.
3552.232-73 Invoices.
3552.236-70 Mailing of Correspondence and Bids.
3552.236-71 Additive Items.
3552.236-72 Cost Limitation.
3552.236-73 Scope of Work.
3552.236-74 Work Sites, Yards, Shops, and Offices.
3552.236-75 Work Time Limitations.
3552.236-76 Accident Prevention.
3552.236-77 Working in Confined Spaces.
3552.236-78 Safety Sign.
3552.236-79 Protection of Material and Work.
3552.236-80 Toilet Facilities.

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3552.236-81 Drinking Water.
3552.236-82 Contract Bid Breakdown.
3552.236-83 Descriptive Data and Correspondence.
3552.236-84 Instruction Books.
3552.236-85 Record Drawings.
3552.236-86 Restricted Areas.
3552.236-87 Surplus Space.
3552.243-70 Modification Proposals—Price Breakdown.
3552.244-70 Subcontractors.
3552.247-70 Evaluation of Delivery Terms in Contract Awards.

AUTHORITY: 40 U.S.C. 486(c); Articles IX and XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7664, Mar. 2, 1990, unless otherwise noted.

Subpart 3552.2—Texts of Provisions and Clauses

3552.209-70 Organizational Conflict of Interest Certification/Disclosure.

As prescribed in 3509.508-1, insert the following provision:

ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION/DISCLOSURE (JAN 1990)

(a) An "organizational conflict of interest" exists when the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities, (1) result in an unfair competitive advantage to the contractor, or (2) impair the contractor's objectivity in performing the contract work.

(b) The offeror certifies, to the best of its knowledge and belief, that it [ ] is, [ ] is not (check applicable block) aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror is aware of information bearing on whether a potential conflict may exist, the offeror shall provide a disclosure statement with its offer which describes all relevant information concerning any past, present, or planned interests bearing on whether it (including its chief executives and directors, or any proposed consultant or subcontractor) may have a potential organizational conflict of interest.

(c) The offeror should refer to FAR Subpart 9.5 and PAR Subpart 3509.5 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest.

(d) If the Contracting Officer determines that a potential conflict exists, the offeror shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

3552.209-71 Organizational Conflict of Interest.

As prescribed in 3509.508-2, insert the following clause:

ORGANIZATIONAL CONFLICT OF INTEREST (JAN 1990)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief: (1) There are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in provision 3552.209-70, Organizational Conflict of Interest Certification/Disclosure, of the solicitation; or (2) That the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) Remedies—The Panama Canal Commission may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, terms which shall conform substantially to the language of this clause, including this paragraph (d).

(End of clause)

3552.210-70 Brand Name Products or Equal.

As prescribed in 3510.011(h), insert the following provision:

BRAND NAME PRODUCTS OR EQUAL (JAN 1990)

(As used in this provision, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this (*invitation for bids/request for proposals*) have been identified in the schedule by a "brand name or equal" description, such identification is characteristic of products that will be satisfactory. (*Bids/Proposals*) offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the (*bids/proposals*) and are determined by the Government to meet fully the salient characteristics, requirements listed in the invitation.

(b) Unless the (*bidder/offeror*) clearly indicates in its (*bid/proposal*) that it is offering an "equal" product, its (*bid/proposal*) shall be considered as offering a brand name product referenced in the (*invitation for bids/request for proposals*).

(c)(1) If the (*bidder/offeror*) proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space identified in the (*bid/proposal*). The evaluation of (*bids/proposals*) and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the (*bidder/offeror*) or identified in its (*bid/proposal*) as well as other information reasonably available to the purchasing activity. Caution to (*bidders/offerors*): the purchasing activity is not responsible for locating or securing any information which is not identified in the (*bid/proposal*) and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the (*bidder/offeror*) shall furnish as part of its (*bid/proposal*) all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirement of the (*invitation for bids/request for proposals*), and (ii) establish exactly what the (*bidder/offeror*) proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the (*bidder/offeror*) proposes to modify a product so as to make it conform to the requirements of the (*invitation for bids/request for proposals*). It shall (i) include in its (*bid/proposal*) a clear description of such proposed modifications, and (ii)

clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after (*bid/proposal*) opening to make a product conform to a brand name product referenced in the (*invitation for bids/request for proposals*) will not be considered.

(End of provision)

3552.214-70 Price—Sealed Bidding.

As prescribed in 3514.201-6(a)(1), insert the following provision:

PRICE—SEALED BIDDING (JAN 1990)

Only bids stating a firm, fixed-price expressed in U.S. dollars shall be considered for award. Bids that qualify the bid price in terms of the rate of exchange between U.S. dollars and a foreign currency will be rejected as nonresponsive.

(End of provision)

3552.214-71 Additional Data To Be Submitted.

As prescribed in 3514.201-6(b)(1), insert the following provision:

ADDITIONAL DATA TO BE SUBMITTED (JAN 1990)

Prior to award of the contract, the Contracting Officer may require the apparent low bidder to furnish the following information:

(a) Evidence establishing that the bidder maintains a permanent place of business and has satisfactory and acceptable financial resources to meet obligations incident to the work.

(b) A brief description of work experience by the bidder and the location of major projects.

(c) A list of key personnel which the bidder has available for prosecution of the work to be performed, and a brief summary of such personnel's experience in work similar to that required by this contract.

(d) A complete list and description of all equipment, shops, yards, and storage facilities that the bidder now has or will have available for commencement and prosecution of the work.

(e) Evidence establishing that the bidder positively meets responsibility requirements, such as experience, which are included in the solicitation.

(End of provision)

3552.214-72 Rejection of Bids.

As prescribed in 3514.201-6(b)(2), insert the following provision:

REJECTION OF BIDS (JAN 1990)

Any bid will be rejected that is conditioned upon or proposes that the Panama Canal Commission agree to the use of a price adjustment clause calling for an upward revision of the bid price or to the use of a cost-plus-fixed-fee or comparable pricing arrangement. The right is reserved, as the interest of the Panama Canal Commission may require, to reject any and all bids and to waive any informality in the bids. A bid may be rejected if the bidder fails to furnish a guaranty and submit the data required with the bid; or if the bidder cannot show to the satisfaction of the Contracting Officer that it has the experience and owns or controls by firm option, or can procure the necessary plant to commence work within the time prescribed in the specifications and, thereafter, to prosecute and complete the work at the rate or time specified; or if the bidder cannot show that he is not already obligated to perform other work contemplated in this Solicitation. Any unbalanced bid which, in the opinion of the Contracting Officer, jeopardizes the interests of the Panama Canal Commission will be subject to rejection for that reason.

(End of provision)

3552.214-73 Caution—Sealed Bidding

As prescribed in 3514.201-6(a)(2), insert the following provision:

CAUTION—SEALED BIDDING (JAN 1990)

Bidders are cautioned that any condition, qualification, provision, or comment in their bid, or in a letter transmitting their bid, which in any way modifies, takes exception to, or is inconsistent with the specifications, requirements, or any of the terms, conditions, or provisions of this solicitation, may require the rejection of their bid as nonresponsive.

(End of provision)

3552.214-74 All or None Award—Sealed Bidding.

As prescribed in 3514.201-6(c), insert the following provision:

ALL OR NONE AWARD—SEALED BIDDING (JAN 1990)

Notwithstanding paragraph (c) of provision 52.214-10, Contract Award—Sealed Bidding, award will be made on an "all or none" basis to one bidder for all items, in the quantities and at the unit prices specified for each item. Consequently, for the purpose of determining the most advantageous bid in accordance with paragraph (a) of provision 52.214-10, the word "price" as used therein shall be construed to mean the bidder's aggregate price for all items. Any bid which fails to quote on all items, in the quantities specified for each item, shall be rejected as nonresponsive.

(End of provision)

3552.214-75 All or None Award—Sealed Bidding—Construction.

As prescribed in 3514.201-6(d)(1), insert the following provision:

All or None Award—Sealed Bidding—Construction (Jan 1990)

Regarding paragraph (c) of provision 52.214-19, Contract Award—Sealed Bidding—Construction, award will be made on an "all or none" basis to one bidder for all items. Consequently, for the purpose of determining the most advantageous bid in accordance with paragraph (a) of provision 52.214-19, the word "price" as used therein shall be construed to mean the bidder's aggregate price for all items. As indicated in paragraph (c) of provision 52.214-18, Preparation of Bids—Construction, failure to bid on all items will disqualify the bid.

(End of provision)

Alternate I (*Jan* 1990)

If the construction work is not estimated to exceed $10,000, substitute the following text in place of the basic text:

A contract award will be made on an "all or none" basis to one bidder for all items at the prices specified for each item. The award will be made, without discussions, to the overall low, responsible bidder whose bid, conforming to the solicitation, will be the most advantageous to the Government considering only the bidder's aggregate price for all items and the price-related factors, if any, specified elsewhere in the solicitation. Consequently, bidders are required to bid on all items. Failure to do so will disqualify the bid.

Alternate II (*Jan* 1990)

If the contracting officer determines that (a) the contract work, regardless of its estimated value, will be awarded to one bidder for all the work, and (b) bidding on all items will not be required, substitute the following text in place of the basic text:

A contract award will be made on an "all or none" basis to one bidder for all the contract work. The award will be made, without discussions, to the overall low, responsible bidder whose bid, conforming to the solicitation, will be the most advantageous to the Government considering only the bidder's aggregate price for all items and the price-related factors, if any, specified elsewhere in the solicitation.

3552.215-70 Price.

As prescribed in 3515.407(a)(1), insert the following provision:

Price (Jan 1990)

Only offers stating a firm-fixed-price expressed in U.S. dollars shall be considered for award. Offers that qualify the offer price in terms of the rate of exchange between U.S. dollars and a foreign currency will be rejected as nonresponsive.

(End of provision)

3552.215-71 Caution.

As prescribed in 3515.407(a)(2), insert the following provision:

Caution (Jan 1990)

Offerors are cautioned that any condition, qualification, provision, or comment in their offer, or in a letter transmitting their offer, which in any way modifies, takes exception to, or is inconsistent with the specifications, requirements, or any of the terms, conditions, or provisions of this solicitation, may require the rejection of their offer as nonresponsive.

(End of provision)

3552.215-72 All or None Award.

As prescribed in 3515.407(b), insert the following provision:

All or None Award (Jan 1990)

Notwithstanding paragraph (d) of provision 52.215-16, Contract Award, a contract award will be made on an "all or none" basis to one offeror for all items, in the quantities and at the unit prices specified for each item. Consequently, for the purpose of determining the most advantageous offer in accordance with paragraph (a) of provision 52.215-16, the words "cost or price" as used therein shall be construed to mean the offeror's aggregate cost or price for all items. Therefore, offerors are cautioned to quote on all items, in the quantities specified for each item. Failure to do so will, in effect, eliminate the offeror from consideration for contract award in the event a contract is to be awarded on the basis of initial offers received without discussions, pursuant to paragraph (c) of provision 52.215-16.

(End of provision)

3552.225-70 Language.

As prescribed in 3525.801-76(a), Language, insert the following clause:

LANGUAGE (JAN 1990)

All offers, correspondence and documents required by this solicitation or contract must be submitted in the English language. In the event of inconsistency between any terms of this solicitation or contract and any translation thereof into another language, the English language meaning shall control.

(End of clause)

3552.225-71 Notice of Applicability of United States Federal Law.

As prescribed in 3525.801-76(b), insert the following clause:

NOTICE OF APPLICABILITY OF UNITED STATES FEDERAL LAW (JAN 1990)

All matters relating to the validity, construction, interpretation, performance and enforcement of the contract shall be determined in accordance with applicable federal law of the United States of America.

(End of clause)

3552.225-72 Designated Contractors.

As prescribed in 3525.801-76(c), insert the following clause:

DESIGNATED CONTRACTORS (JAN 1990)

Article XI, "Contractors and Contractors' Personnel," of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977, prescribes, among other things, that—

(a) Whenever contracts are awarded by the Commission to natural persons who are nationals or permanent residents of the United States or to corporations or other legal entities organized under the laws of the United States and under the effective control of such persons, such contractors shall be so designated by the United States and such designations shall be communicated to the authorities of the Republic of Panama.

(b) Designated contractors shall be subject to the laws and regulations of the Republic of Panama except with respect to the special provisions established by the above named international agreement, which enumerate such obligations and benefits as, among others:

(1) Designated contractors must, while in Panama, engage exclusively in the work for which they have been contracted by U.S. Government agencies; and,

(2) Designated contractors shall be accorded the same rights established for U.S. citizens employed by the U.S. Government in Panama pertaining to Panamanian immigration requirements, relief from the payment of certain Panamanian taxes and duties, and the use of certain facilities located on U.S. military installations in Panama.

(c) The provisions of Article XI shall be similarly applied to the subcontractors and to the employees of the contractors and subcontractors and their dependents who are nationals or residents of the United States. These employees and dependents shall not be subject to the Panamanian Social Security System.

(d) Upon withdrawal of the designation of a contractor, the Commission shall notify the authorities of the Republic of Panama.

(End of clause)

3552.225-73 Responsibility for Observance of Laws, Orders, and Regulations.

As prescribed in 3525.801-76(d), insert the following clause:

RESPONSIBILITY FOR OBSERVANCE OF LAWS, ORDERS, AND REGULATIONS (JAN 1990)

The Contractor shall be responsible for complying with all applicable laws, regulations, standards and requirements, including traffic and vehicular laws and regulations, prescribed by the Republic of Panama for contractors performing work for the Panama Canal Commission (hereinafter referred to as the Commission). The Contractor shall similarly be responsible for complying with all laws, Executive Orders, and United States Government rules and regulations which the Commission, as an agency of the United States Government performing work in the Republic of Panama, is required to follow. The areas of legal competence have been agreed to between both countries pursuant to and in accordance with the Panama Canal Treaty of 1977, including such executive agreements and implementing legislation as may be in effect. Failure of the Contractor to familiarize himself with all laws, orders, rules, regulations or standards promulgated by either country, which are or may become applicable to the work under this contract, shall not constitute a basis for adjustments under the contract.

(End of clause)

3552.227-70 Government Rights.

As prescribed in 3527.304-3(b), insert the following clause:

GOVERNMENT RIGHTS (JAN 1990)

The Contractor may retain the entire right, title, and interest, throughout the world, to all drawings, designs, specifications, notes, and other works developed in the performance of this contract, provided that the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to have and to use same on any other Government design or construction, and provided that the Contractor shall execute or have executed, upon request, and shall promptly deliver to the Federal agency, all instruments necessary to establish or to confirm said license.

(End of clause)

3552.228-70 Bid Guarantee Amount.

As prescribed in 3528.101-3(a), insert the following clause:

BID GUARANTEE AMOUNT (JAN 1990)

(a) The amount of the bid guarantee required by clause 52.228-1, Bid Guarantee, shall be 20 percent of the total amount of the bid, excluding options and additives if any, or $3,000,000, whichever is less.

(b) If the bidder elects to furnish the guarantee in the form of a bid bond, the bond shall be submitted on Standard Form 24. Corporations executing the bond as sureties must be among those appearing on the current U.S. Treasury Department Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570.

(End of clause)

3552.228-71 Bonds and Insurance.

As prescribed in 3528.102-3, insert the following clause:

BONDS AND INSURANCE (JAN 1990)

The bidder who is awarded the contract shall be required to furnish performance and payment bonds, certificates of Workman's Compensation, if required, and public liability and automobile insurance as stipulated in the General Conditions. The payment by the Commission of the bond premiums to the Contractor shall not be made as increments of the individual progress payments and shall not be in addition to the contract price.

(End of clause)

3552.228-72 Bonds.

As prescribed in 3528.102-3, insert the following clause:

BONDS (JAN 1990)

(a) Corporations executing the bond as sureties must be among those appearing either on the Panama Canal Commission's list of locally acceptable sureties or on the U.S. Treasury Department's Circular 570, and must be acting within the limitations set forth therein.

(b) *Payment Bond:* If the contract exceeds $2,000, the Contractor shall furnish a payment bond with good and sufficient surety or sureties acceptable to the Commission for the protection of persons furnishing material or labor in connection with the performance of the work under this contract on Standard Form 25-A. The penal sum of such payment bond shall be as follows: (1) When the contract price is $1,000,000 or less, 50 percent of the contract price; (2) when the contract price is in excess of $1,000,000, but no more than $5,000,000, 40 percent of the contract price; (3) or $2,500,000 when the contract price is more than $5,000,000.

(c) *Performance Bond:* If the contract exceeds $2,000, the Contractor shall furnish a performance bond with good and sufficient surety or sureties acceptable to the Commission in connection with the performance of the work under this agreement on Standard Form 25. The penal sum of such performance bond shall be 100 percent of the contract price.

(d) The bonds herein shall not be dated prior to the date of the contract and shall be furnished by the Contractor to the Commission not later than 10 calendar days after award.

(End of clause)

3552.228-73 Non-U.S. Workers' Compensation Insurance.

As prescribed in 3528.309(a), insert the following clause:

NON-U.S. WORKERS' COMPENSATION INSURANCE (JAN 1990)

(a) Pursuant to a waiver granted by the Secretary of Labor, the provisions of the Defense Base Act (see clause 52.228-3) are not applicable to any public-work contract awarded by the Panama Canal Commission in the Panama Canal area with respect to non-U.S. citizen employees of Commission contractors. The waiver does not apply, however, to such employees who are:

(1) Hired in the United States by any contractor; or

(2) Residents of the United States.

(b) The waiver was granted with the proviso that non-U.S. citizen employees exempted from the provisions of the Defense Base Act by virtue of the waiver will be provided workers' compensation benefits prescribed in the Panamanian Social Security System. Accordingly, the Contractor shall provide workmen's insurance coverage (Seguros de Riesgos Profesionales) as provided by the Panamanian Social Security System in accordance with Cabinet Decree No. 68 of March 31, 1970, for all non-U.S. citizen employees that are not covered by clause 52.228-3 of this contract. The Seguro de Riesgos Profesionales coverage shall be provided before the Contractor commences performance and shall be maintained until performance is completed.

(End of clause)

3552.228-74 Special Panama Insurance.

As prescribed in 3528.370, insert the following clause:

SPECIAL PANAMA INSURANCE (JAN 1990)

(a) "Designated contractors" shall, upon initiation of work or construction activities, obtain appropriate insurance to cover civil liabilities in the Republic of Panama that may arise as a result of acts or omissions done in the performance of official duty by their employees. The insurance coverage shall include coverage for the tortious conduct of their employees. Such insurance may be obtained from insurance companies licensed to engage in such business within the Republic of Panama.

(b) The Contractor shall include this clause in all subcontracts.

(End of clause)

3552.228-75 Proposal Guarantee.

As prescribed in 3528.101-3 (a) and (b), insert the following clause:

PROPOSAL GUARANTEE (JAN 1990)

(a) Failure to furnish a guarantee in the proper form and amount, by the time set for the receipt of offers, may be cause for rejection of the proposal.

(b) The offeror shall furnish a guarantee in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The amount of this guarantee shall be 20 percent of the total amount of the proposal price, excluding options and additives if any, or $3,000,000, whichever is less. The Contracting Officer will return guarantees, other than bid bonds, (1) to unsuccessful offerors as soon as practicable after the completion of the evaluation process, and (2) to the successful offeror upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the proposal as accepted.

(c) If the successful offeror, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(d) Unless otherwise specified in the proposal, the offeror will (1) allow 60 days for acceptance of its proposal, and (2) give bond within 10 days after receipt of the forms by the offeror.

(e) In the event the contract is terminated for default, the Contractor is liable for any cost of acquiring the work that exceeds the amount of its proposal, and the proposal guarantee is available to offset the difference.

(f) Regarding paragraph (b) of this clause, if a bid bond is furnished, it must be submitted on Standard Form 24. Corporations executing the bond as sureties must be among those appearing on the U.S. Treasury Department's Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570.

(End of Clause)

3552.228-76 Performance Bond.

As prescribed in 3528.103-70(a), insert the following clause:

PERFORMANCE BOND (JAN 1990)

(a) The Contractor shall furnish a performance bond with good and sufficient surety or sureties in connection with the work under this contract on Standard Form 25, which requires that the surety or sureties must be among those appearing on the current U.S. Treasury Department Circular 570 (published in the FEDERAL REGISTER), and any amendments thereto, and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570. The bond is to be completed in accordance with the instructions on the reverse side of Standard Form 25.

(b) The penal sum of such performance bond shall be 100 percent of the contract price. The bond must not be dated prior to the date of the contract and shall be furnished by the Contractor to the Contracting Officer not later than 30 calendar days after the date of receipt by the Contractor of notice of award of the contract. As used in Standard Form 25, the term "Government" shall mean the "Panama Canal Commission".

(c) Under the terms of Standard Form 25 and this contract, the penal obligation specified in paragraph (b) of this clause shall be in effect during the life of the contract and during all warranty periods stipulated in the contract.

(End of Clause)

3552.228-77 Performance and Payment Bonds.

As prescribed in 3528.103-70 (a) and (b), insert the following clause:

PERFORMANCE AND PAYMENT BONDS (JAN 1990)

(a) *General.* (1) The bonds required by paragraphs (b) and (c) of this clause are to be completed in accordance with the instructions on the reverse side of the respective bond forms. Corporations executing the bonds as sureties must be among those appearing on the current U.S. Treasury Department Circular 570 (published in the FEDERAL REGISTER), and any amendments thereto, and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570.

(2) The bonds must not be dated prior to the date of the contract and shall be furnished by the Contractor to the Contracting Officer not later than 30 calendar days after the date of receipt by the Contractor of notice of award of the contract.

(b) *Performance Bond.* The Contractor shall furnish a performance bond on Standard Form 25 in connection with the performance of the work under this contract. The penal sum of such bond shall be 100 percent of the contract price.

(c) *Payment Bond.* The Contractor shall furnish a payment bond on Standard Form 1416 for the protection of persons furnishing material and/or labor in the prosecution of the contract. The penal sum of such bond shall be as follows: (1) 50 percent of the contract price if such price is not more than $1,000,000; (2) 40 percent of the contract price if such price is more than $1,000,000 but not more than $5,000,000; or (3) $2,500,000 if the contract price is more than $5,000,000.

(End of Clause)

3552.231-70 Travel Costs.

As prescribed in 3531.205-46(b), insert the following clause:

TRAVEL COSTS (JAN 1990)

Costs incurred by the Contractor for travel and per diem in the performance of this contract that are authorized elsewhere in this contract shall be reimbursed to the Contractor in accordance with the Federal Travel Regulations, prescribed by the General Services Administration, in effect on the dates of performance of this contract.

(End of clause)

3552.232-70 Contract Payments.

As prescribed in 3532.111(a)7, insert the following clause:

CONTRACT PAYMENTS (JAN 1990)

(a) Contract payments, unless otherwise specified, will be made in United States currency, by check drawn on a local branch of a United States bank.

(b) When the Contracting Officer determines that the value of materials delivered to the work site may be taken into account in preparing the progress payment estimate, the Contractor shall:

(1) Compile the initial inventory list which shall be complete as regards to descriptions, quantities, nomenclatures, and prices, and shall be fully supported by certified invoices or other documentary evidence acceptable to the Contracting Officer. The list must be revised each month to show additions to the inventory, if any (supported by additional invoices), and deletions of material used during the month.

(2) Submit monthly, subsequent lists for the material previously covered by certified invoices showing the exact status of remaining material based on a physical inventory.

(3) Furnish inventory lists in duplicate at least five days prior to the date for submission of progress estimate for monthly payment.

(c) In approving payments for material inventories, the Contracting Officer will authorize payment of 75 percent of the cost of material as part of the monthly payments, provided, however, that:

(1) Any line item with a total value of less than $100 will be deleted; and

(2) The total value of the inventory, exclusive of deleted line items, exceeds $1,000.

(End of clause)

3552.232-71 Availability of Funds.

As prescribed in 3532.705-1, insert the following clause:

AVAILABILITY OF FUNDS (JAN 1990)

The authorization of performance of work under this contract during the initial contract period and any extension period(s) is contingent upon the availability of funds to procure this service. If the contract is awarded or extended, the Panama Canal Commission's obligation beyond the end of the fiscal year (September 30) in which the award or extension is made is contingent upon the availability of funds from which payment for the contract services can be made. No legal liability on the part of the Panama Canal Commission for payment of any money beyond the end of each fiscal year (September 30) shall arise unless or until funds are made available to the Contracting Officer for performance and written notice of such availability is given to the Contractor.

(End of clause)

3552.232-72 Presentation of Statement of Release From Claims.

As prescribed in 3532.806(a), insert the following clause:

PRESENTATION OF STATEMENT OF RELEASE FROM CLAIMS (JAN 1990)

As a condition for final payment, the Contractor shall present a release of all claims against the Government arising by virtue of this contract. The release shall be applicable to all claims except those that the Contractor has specifically excepted in stated amounts from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 203 and 41 U.S.C. 15). The release is due within 14 days of final acceptance.

(End of clause)

3552.232-73 Invoices.

As prescribed in 3532.111(a)(8), insert a clause substantially as follows:

INVOICES (JAN 1990)

(a) Invoices shall be submitted in an original and two copies to the office designated elsewhere in this contract.

(b) To constitute a proper invoice for supply or service (other than architect-engineer service) contracts, the invoice must include the items listed in paragraph (a)(4), subdivisions (i) through (viii) of clause 52.232-25, Prompt Payment. The invoice must be accompanied by a copy of the packing list, showing weights and measurements (gross and net) and contents of each package, if applicable. If items are mailed, the insurance parcel post receipt or copy thereof must accompany the invoice.

(c) To constitute a proper invoice for construction contracts, the invoice must include the items listed in paragraph (a)(2), subdivisions (i) through (ix) of clause 52.232-27, Prompt Payment for Construction Contracts.

(d) To constitute a proper invoice for architect-engineer services, the invoice must include the items listed in paragraph (a)(3), subdivisions (i) through (viii) of clause 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts.

(e) If this contract requires a written release from the Contractor with respect to claims, the release must accompany the invoice.

(End of clause)

3552.236-70 Mailing of Correspondence and Bids.

As prescribed in 3536.371(a)(6), insert the following provision:

MAILING OF CORRESPONDENCE AND BIDS (JAN 1990)

(a) Prospective bidders may submit inquiries concerning the specifications by writing the following:

(For local bidders)
Specifications and Estimates Branch
Engineering Division
Engineering and Construction Bureau
Balboa, Republic of Panama

(For other bidders)
Specifications and Estimates Branch
Engineering Division
Engineering and Construction Bureau
APO Miami 34011-5000

(b) Bids to be mailed shall be addressed as follows:

(For local bidders)
Contracting Officer
Engineering and Construction Bureau
Panama Canal Commission
Balboa, Republic of Panama

(For other bidders)
Contracting Officer
Engineering and Construction Bureau
Panama Canal Commission
APO Miami 34011-5000

(End of provision)

3552.236-71 Additive Items.

As prescribed in 3536.371(a)(7), insert the following provision:

ADDITIVE ITEMS (JAN 1990)

(a) The low bidder for purposes of award shall be the conforming responsive bidder offering the lowest total price for the base bid item plus the largest number of additive bid items that can be awarded in the numerical order of priority listed in the schedule within the funds determined by the Contracting Officer to be available on the date of bid opening.

(b) For example, when the amount of available funds is $100,000, and a bidder's base bid and bid for successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, respectively, the total amount of this bid for purposes of award would be $95,000 for the base bid plus the first additive, with the second, third and forth additives being omitted because the second additive ($8,000) would cause the total bid to exceed $100,000. If, for more than one bidder, the lowest total price for the base bid item plus the largest number of additive bid items that can be awarded are equal, then the low bidder for purposes of award shall be the one submitting the lowest price for the base bid item.

(c) After the low bidder has been determined, the Contracting Officer shall be free to award the contract for the base bid item and any quantity of the additive bid items, but only in the numerical order of priority listed in the schedule, and provided that the total price is within the amount of funds available on the date of award and that the award does not exceed the price offered by any other conforming responsive bidder for the same bid items.

(d) The Contracting Officer may reject a bid as nonresponsive if it is materially unbalanced as to prices for any of the different bid items. A bid is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

Alternate I (*Jan* 1990)

If the additives may be awarded with the base bid item in any combination, substitute the following text in place of the basic text:

(a) The low bidder for purposes of award shall be the conforming responsive bidder offering the lowest total price for the base bid item plus, in the numerical order of priority listed in the schedule, the largest number of additive bid items that can be awarded within the funds determined by the Contracting Officer to be available on the date of bid opening.

(b) If, for all bidders, inclusion of the next additive bid item in the listed order of priority would make the award exceed such available funds, it shall be omitted and the next subsequent additive bid item or items shall be included if the prices on one or more bids allow award thereon within the funds available. For example, when the amount of available funds is $100,000, and a bidder's base bid and bid for successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, respectively, the total amount of this bid item for purposes of award would be $99,000 for the base bid plus the first ($10,000) and fourth ($4,000) additives. All bids shall be evaluated and the low bidder determined on the basis of the same additive bid items, as above provided. If, for more than one bidder, the lowest total price for the base bid item plus the largest number of additive bid items that can be awarded are equal, then the low bidder for purposes of award shall be the one submitting the lowest price for the base bid item.

(c) After the low bidder has been determined, the Contracting Officer shall be free to award the contract for the base bid item and any quantity and combination of the additive bid items regardless of their numerical order of priority listed in the schedule, provided that the total price is within the amount of funds available on the date of award and that the award does not exceed the price offered by any other conforming responsive bidder for the same bid items.

(d) The Contracting Officer may reject a bid as nonresponsive if it is materially unbalanced as to prices for any of the different bid items. A bid is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

3552.236-72 Cost Limitation.

As prescribed in 3536.371(a)(9), insert the following provision:

COST LIMITATION (JAN 1990)

A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. By signing its bid, the bidder certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (1) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (2) exceed the cost limitations unless such limitations have been waived by the Commission's Procurement Executive prior to award.

(End of provision)

3552.236-73 Scope of Work.

As prescribed in 3536.570(k), insert the following clause:

Scope of Work (Jan 1990)

The Contractor shall furnish all plant, materials, equipment, supplies, labor and transportation, including, fuel, power, water (except any materials, equipment, utility or service, if any, specified herein to be furnished by the Commission), as required to accomplish all work under the contract, in strict accordance with the specifications, schedules, and drawings, all of which are made a part hereof, and including such detail drawings as may be furnished by the Contracting Officer from time to time during the prosecution of the work in explanation of said drawings.

(End of clause)

3552.236-74 Work Sites, Yards, Shops, and Offices.

As prescribed in 3536.570(l), insert the following clause:

Work Sites, Yards, Shows, and Offices (Jan 1990)

(a) The term "work site" will embrace all areas wherein operations are conducted by the Contractor in connection with the contract, including Commission work areas, plant, shops, yards, offices, camps and other facilities. The Contractor may be permitted to use areas within the Canal Operating Area for storage-of-work purposes on a temporary basis.

(b) Prior to commencement of work, the Contractor shall, upon request, submit for the approval of the Contracting Officer, prints in quadruplicate, showing the locations of its major plant, offices, buildings, shops, storage yards, and other construction appurtenances which it proposes to construct. The Contractor shall remove any structure which it may construct in Canal Operating Areas, and restore the work site to its original condition after completion of the work.

(c) If, at any time during the progress of the work, areas which have been allocated to the Contractor are not being used by the Contractor or are not essential to the future execution of the work, as determined by the Contracting Officer, the Contractor shall, when so directed, promptly clean up and vacate such areas at no expense to the Commission. The Contractor shall keep the buildings and grounds in use by the contractor at the work site in an orderly and sanitary condition, subject to the approval of the Contracting Officer.

(d) Only equipment and materials required or used in connection with the work under the contract may be stored in Canal Operating Areas. Upon completion of the contract, and before final payment is made, the Contractor shall remove all equipment and materials from such areas.

(End of clause)

3552.236-75 Work Time Limitations.

As prescribed in 3536.570(m), insert the following clause:

Work Time Limitations (Jan 1990)

No work shall be done on Sundays or on days treated as a holiday for employees of United States Government agencies in the Republic of Panama, unless authorized or directed by the Contracting Officer. Requests by the Contractor to work on such days must be made in writing at least three days in advance.

(End of clause)

3552.236-76 Accident Prevention.

As prescribed in 3536.570(n), insert the following clause:

Accident Prevention (Jan 1990)

(a) In performing this contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies and equipment; and avoiding work interruptions. For these purposes, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for this purpose are taken.

(b) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the Contracting Officer.

(c) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(d) The Contractor shall call to the attention of the Contracting Officer or his representative any unsafe condition which is not within the power of the Contractor to correct but which could be corrected by others.

(e) The Contractor shall, when performing work of an electrical nature, or when working in close proximity to electrical equipment or circuits, observe the following:

(1) Be responsible for determining that the facility on which his men are to work is de-energized, isolated, and identified with accepted tag out/lock out procedures. The Commission will de-energize or isolate the cable, conductor, bus, circuit breaker, or line on which the Contractor desires to work. The Commission will also re-energize the cable, conductor, bus, circuit breaker, or line upon which the Contractor has completed work and which he certifies is ready for service.

(2) When performing work, such as painting, roofing or modifying buildings, in close proximity to electric wires, work shall be scheduled in such a manner that these wires shall be de-energized during the period men are working around them. Arrangements shall be made with the Contracting Officer's representative for de-energizing such service wires and, unless otherwise specified, work requests shall be furnished by the Contractor to the Commission's Electrical Division to cover such work.

(3) Painting, alterations, and additions to Commission facilities frequently require work to be performed in close proximity to electrical equipment and circuits within buildings. When such work, in the opinion of the Contracting Officer, requires the de-energization of circuits, arrangement for de-energizing services will be made by the Contracting Officer with the agency involved.

(4) De-energization of circuits required in (2) and (3) above shall be scheduled in such a manner that prolonged service interruptions shall be avoided.

(f) In addition to the above, the Contractor shall:

(1) Submit, within 30 calendar days after date of award, a written outline of his proposed safety program for the contract. The safety program shall include frequent and appropriate safety training sessions for employees as a regular and integral part of the contract activities.

(2) Submit for approval a list of the personal protective equipment, by type and manufacturer, to be used by employees in hazardous occupations.

(3) Confer with representatives of the Contracting Officer to discuss and develop mutual understandings relative to administration of the overall safety program.

(g) The Contractor shall be responsible for its subcontractors' compliance with this clause.

(End of clause)

[55 FR 7664, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3552.236-77 Working in Confined Spaces.

As prescribed in 3536.570(o), insert the following clause:

WORKING IN CONFINED SPACES (JAN 1990)

The Contractor shall comply with the Commission's policy regarding work to be performed in confined or enclosed spaces. This policy is set forth in a pamphlet entitled "Panama Canal Commission Confined Spaces Policy", which will be made available to the Contractor, or a prospective contractor, upon request to the Contracting Officer or his representative.

(End of clause)

3552.236-78 Safety Sign.

As prescribed in 3536.570(p), insert the following clause:

SAFETY SIGN (JAN 1990)

The Contractor shall construct a safety sign at the work site at a location directed by the Contracting Officer. The sign shall be 6 feet by 4 feet in size and shall conform to the requirements of the sketch attached at the end of these General Conditions. The sign shall be erected as soon as possible, but not later than 10 days after work is initiated at the work site. No separate payment will be made for erecting and maintaining the safety sign.

(End of clause)

3552.236-79 Protection of Material and Work.

As prescribed in 3536.570(q), insert the following clause:

PROTECTION OF MATERIAL AND WORK (JAN 1990)

The Contractor shall protect and preserve all material, supplies and equipment of every description (including property which may be furnished or owned by the Commission) and all work performed. All reasonable requests of the Contracting Officer to enclose or specially protect such property shall be complied with. If, as determined by the Contracting Officer, material, equipment, supplies, and work performed are not adequately protected by the Contractor, such property may be protected by the

Commission, and the cost thereof may be charged to the Contractor or deducted from any payments due the Contractor.

(End of clause)

3552.236-80 Toilet Facilities.

As prescribed in 3536.570(r), insert the following clause:

TOILET FACILITIES (JAN 1990)

Unless otherwise noted, the Contractor shall provide and maintain adequate toilet facilities at the work site for the use of all personnel engaged in the work under the contract. The number, types and locations of such toilet facilities shall be approved by the Contracting Officer. These facilities, where connection to the sanitary sewer system is possible, will be connected and disconnected to the sewer system by the Commission at the expense of the Contractor. The toilet facilities shall be maintained by the Contractor in a clean and sanitary condition. Upon completion of the work, all toilet facilities shall be removed by the Contractor.

(End of clause)

3552.236-81 Drinking Water.

As prescribed in 3536.570(s), insert the following clause:

DRINKING WATER (JAN 1990)

Unless otherwise noted, the Contractor shall provide suitable drinking water and sanitary dispensing facilities for the Contractor's employees.

(End of clause)

3552.236-82 Contract Bid Breakdown.

As prescribed in 3536.570(t), insert the following clause:

CONTRACT BID BREAKDOWN (JAN 1990)

The Contractor shall, within 10 days after receipt of the Notice to Proceed, or on receipt of request, submit for approval a breakdown of its bid in a form to be outlined by the Contracting Officer. Supplementary bid breakdowns of all or part of the bid shall be furnished if requested by the Contracting Officer. Payments to the Contractor shall be based upon the information presented in the approved bid breakdown.

(End of clause)

3552.236-83 Descriptive Data and Correspondence.

As prescribed in 3536.570(u), insert the following clause:

DESCRIPTIVE DATA AND CORRESPONDENCE (JAN 1990)

(a) All catalogs, operating instructions, descriptive literature, references, specifications, drawings and notes relevant to the equipment furnished under the specifications, and correspondence shall be in the English language. All drawings shall be prepared in accordance with American Standard Drafting Room Practice as approved by the American National Standard Institute (ANSI) standards and in accordance with the following:

(1) All dimensions shall be given in feet and inches.

(2) All weights shall be avoirdupois scales.

(3) All volume measurements shall be in cubic feet, cubic inches or U.S. gallons (231 cu. in/gal).

(4) All heat quantities shall be in British thermal units (Btu's).

(5) All instruments shall read in units of the English system, except gallons shall be U.S. gallons as noted in paragraph (a)(3) of this clause.

(b) When required by the various sections of these specifications or when requested by the Contracting Officer, seven (7) copies (unless otherwise specified) of the following items shall be submitted by the Contractor to the Contracting Officer for approval.

(1) *Material Lists:* Before any materials, fixtures or equipment are purchased, the Contractor shall submit a complete list of materials, fixtures and equipment to be incorporated in the work, together with the names and addresses of the manufacturers and their catalog numbers and trade names. A separate complete list shall be furnished for the equipment called for under each section of the specifications. No consideration will be given to partial lists submitted from time to time.

(2) *Descriptive Data:* In order to establish quality or suitability of materials, fixtures and equipment, the Contractor shall furnish detailed information and descriptive data for the various items. Approval of items will be based on manufacturer's published ratings. Any items which are not in accordance with the specifications will be rejected. The product of any reputable manufacturer regularly engaged in the commercial production of specified equipment will not be excluded on the basis of minor differences, provided all essential requirements of this specification relative to materials, capacity, and performance are met.

(3) *Samples:* (i) The Contractor shall submit all samples within a reasonable time before use to permit inspection and testing. Samples of materials subject to laboratory tests require, generally, a minimum of 20 days for tests after receipt of sample by the Contracting Officer. However, considerably more time may be required depending on the nature of the tests and the ability of the laboratory to take care of current testing requirements.

(ii) Samples of the sizes and numbers required by the Contracting Officer or specified in the contract shall be submitted (except when this requirement is waived by the Contracting Officer) with label on each, giving contract number, specification paragraph, name and materials, trade name, name of manufacturer, place of origin, name and location of building on which to be used, and name of Contractor submitting same.

(iii) Samples shall be so packed as to ensure delivery at destination in good condition and with all transportation charges prepaid by sender.

(iv) Samples of materials not subject to destructive tests, when approved, will be kept on file in the office of the Contracting Officer until the completion of the work, except samples of hardware or other items approved by the Contracting Officer, which may be suitably marked for identification and installed in the work. If the Contractor desires an approved sample for the Contractor's own file or for a manufacturer, the Contractor shall submit sufficient additional samples to permit the desired distribution. Samples approved or rejected will be returned to the Contractor only at the Contractor's request and expense.

(v) Samples selected will be tested in accordance with the requirements of the applicable material specifications. If a sample fails to meet specification requirements, the cost of testing shall be at the expense of the Contractor. Failure of samples to pass specified requirements will be sufficient cause for refusal to consider for this work any further samples from the manufacturer whose materials have failed to pass the required tests.

(c) *Submittals:* Each submittal shall be accompanied by the required number of Panama Canal Form 3062, Submittal Data For Approval, fully executed and certified by the Contractor. When possible, a single transmittal shall be used for all work of a section of the specifications, but in no instance shall a transmittal include work of more than one section. Each copy of each item submitted for approval shall also be properly identified as to the subject matter indicated thereon, the item of equipment or material to which it pertains, and the contract number under which it is submitted. Each point of difference between the proposed equipment or material and the specified equipment or material shall be clearly indicated on the submittal. The submittals shall be complete and shall be checked by both the materials or equipment supplier and the Contractor, and shall contain all required and necessary detailed information. Fabrication of the equipment and construction where involved shall not start until the submittals have been approved.

(d) If approved by the Contracting Officer, each copy of the submittal will be identified as having received such approval by being stamped either "Approved" or "Approved as Noted", and one set will be returned to the Contractor. Such approved submittals need not be resubmitted. If, however, the set returned to the Contractor is stamped "Disapproved", such submittal shall be resubmitted as expeditiously as possible. If the Contractor desires to have more than one copy returned for the Contractor's use, the Contractor must increase the number of copies submitted accordingly and must so indicate on the transmittal form.

(e) The approval of submittals by the Contracting Officer shall not be construed as a complete check, but will indicate only that, in general, the materials, equipment, system, arrangement, detailing and method of construction are satisfactory. Approval will not relieve the Contractor of the responsibility for any error or omission which may exist, and the Contractor shall be responsible for the dimensions and design of adequate connections, details, satisfactory construction, installation and operation of all work in accordance with the contract provisions. Approval shall be subject to final, in-place inspection of the work.

(End of clause)

3552.236-84 Instruction Books.

As prescribed in 3536.570(u), insert the following clause:

Instruction Books (Jan 1990)

The Contractor shall deliver to the Contracting Officer nine (9) copies (unless otherwise specified) of all instruction books as called for under the various sections of the Technical Conditions. The instruction books shall be submitted and approved before work can be started on installation of the equipment to which they pertain. Each copy of the instruction books shall provide legible, complete and clear instructions, descriptions and data for installation, operation, maintenance and repair of the equipment as well as replacement parts lists. Each copy of an instruction book shall be bound in separate durable covers. Method of binding shall be post type or equivalent to permit insertion of replacement pages. Ring or spiral type loose leaf binders are not acceptable. Each copy shall be properly and indelibly identified with the name of the project, the contract number, and the name and location of the equipment to which it pertains.

(End of clause)

3552.236-85 Record Drawings.

As prescribed in 3536.570(u), insert the following clause:

RECORD DRAWINGS (JAN 1990)

The Contractor shall, during the progress of the work, keep a careful and current record, on a separate set of contract drawings, of all changes and corrections from the layouts shown on the drawings. These drawings shall be available for inspection at all times at the work site indicated by the drawings. If the Contracting Officer determines that the record drawings are seriously out of date, the Contracting Officer may require the Contractor to cease physical work on the portion of the work covered by the drawings until the drawings are brought up to date. Any costs of delays resulting from such actions by the Contracting Officer shall be borne by the Contractor. Upon completion, the Contractor shall revise one set of prints of contract drawings, furnished by the Contracting Officer, showing the work as actually constructed. These drawings shall be delivered to the Contracting Officer within 14 calendar days after receipt of the "Acceptance of Work" letter. All revisions made to the contract drawings shall be shown so that they stand out against the unchanged items in the drawing.

(End of clause)

3552.236-86 Restricted Areas.

As prescribed in 3536.570(v), insert the following clause:

RESTRICTED AREAS (JAN 1990)

(a) If any of the work is located within a restricted area (such as locks areas, power stations, water purification plants, pump stations, and industrial areas), installation clearances, at no cost to the Contractor, will be required for all employees who must work in the restricted area. The Contractor shall submit to the Contracting Officer a listing of all employees to be cleared. The listing should be submitted at least 15 days before the anticipated starting date and should include the full name and cedula or identification card number of each employee and must be in alphabetical order.

(b) Employees of the Contractor must carry their cedulas or identification cards at all times and produce them upon request of authorized personnel. The Contractor shall ensure that the Contractor's employees remain in the immediate area of work and do not wander indiscriminately about the restricted areas.

(End of clause)

3552.236-87 Surplus Space.

As prescribed in 3536.570(y), insert the following clause:

SURPLUS SPACE (JAN 1990)

Surplus space in Commission buildings, facilities, or land areas may be rented by Commission contractors, or by subcontractors through and in the name of a Commission contractor, for use in support of contract performance upon a written request by the Contractor to the Contracting Officer. The request shall include specific information regarding the location desired, the number of square feet required, and the type of activities to be conducted. If the request is accepted, the space assignment will be administered under the terms of a "Letter of Authorization" (LOA). Failure by the Contractor to comply with any of the terms of the LOA, or to completely remove itself from the rented space after the Contracting Officer has advised the Contractor that the LOA is terminated, shall be construed as a violation of this contract clause and shall entitle the Contracting Officer to take whatever action is appropriate under the contract, including termination for default and the withholding of final payment.

(End of clause)

3552.243-70 Modification Proposals—Price Breakdown.

As prescribed in 3543.205 insert the following clause:

MODIFICATION PROPOSALS—PRICE BREAKDOWN (JAN 1990)

The Contractor shall furnish an itemized price breakdown, as required by the Contracting Officer, with the Contractor's proposal in connection with a contract modification. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract and overhead costs as well as profit, and shall cover all work involved to accomplish the modification, whether deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by such date as may be specified by the Contracting Officer.

(End of clause)

3552.244-70 Subcontractors.

As prescribed in 3536.570(x), insert the following clause:

SUBCONTRACTORS (JAN 1990)

If subcontracts have been awarded for work under this contract, the Contractor shall submit to the Contracting Officer, within 30 calendar days after the date of award, a statement on the Commission's standard "Subcontractors" form setting forth the name and address of the subcontractor, a summary description of the work subcontracted and a description of subcontractor's previous experience in related work. If, at any time, the Contracting Officer determines that any subcontractor's performance is unsatisfactory, the Contracting Officer will notify the contractor accordingly, and steps will be taken immediately for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this contract shall create any contractual relation between the subcontractor and the Commission. Subcontractors and their employees shall be considered to be employees of the Contractor.

(End of clause)

3552.247-70 Evaluation of Delivery Terms in Contract Awards.

As prescribed in 3547.370, insert the following provision:

EVALUATION OF DELIVERY TERMS IN CONTRACT AWARDS (JAN 1990)

(a) When competing offers are received which specify the two different allowable terms of delivery, the offers will be evaluated at the actual or constructive landed cost in the Republic of Panama in accordance with the procedures stated below. In this connection, and for evaluation purposes only, the point of delivery will be the Port of Balboa, Panama or the Port of Cristobal, Panama for all offerors. Therefore, offerors quoting on an f.o.b. destination New Orleans basis shall furnish the total cubic measurement for each item being offered in order to apply the following procedures:

(1) *F.o.b. Destination New Orleans:* Offers quoting delivery in the United States are required on an f.o.b. destination New Orleans, Louisiana basis since transportation from New Orleans will be by a vessel, operating pursuant to a U.S. Government contract, which will discharge at the Port of Balboa. In order to compare these offers with offers quoting c.i.f. destination Panama, the following factors will be applied:

(i) Ocean freight, New Orleans to Balboa $______ *(Contracting Officer insert appropriate amount)* per measurement ton of 40 cubic feet (MTON). This rate includes stevedoring and handling fees.

(ii) A self-insured loss factor of one percent of the dollar value of the offer price.

(iii) If the delivery port specified in the Commission solicitation is Cristobal, transportation from Balboa to Cristobal will be calculated at the rate of $______ *(Contracting Officer insert appropriate amount) per MTON.*

(2) *C.i.f. Destination Panama:* Foreign offerors proposing to ship from foreign countries, U.S. offerors preferring to ship directly to Panama, and Panamanian offerors proposing to ship from stock within the Republic of Panama, are required to ship on a c.i.f. Balboa, Panama or Cristobal, Panama basis, as applicable.

(b) Failure to furnish the total cubic measurements of the individual items could result in the rejection of the offer. Moreover, if actual total cubic measurements vary from the information furnished and the award was made to the Contractor on the constructive cost based on the erroneous information, the Contractor will be charged for the difference between the actual cost and the price of the next low responsive offeror.

(End of provision)

PART 3553—FORMS

Sec.
3553.000 Scope of part.

Subpart 3553.1—General

3553.107 Obtaining forms.

Subpart 3553.2—Prescription of Forms

3553.200 Scope of subpart.
3553.213 Small purchase and other simplified purchase procedures (Forms 1010, 1820, 1821, 1822, 2008, 3083, 3163, 3163-MTD, 7071, 7074).
3553.215 Contracting by negotiation (Form 6122).
3553.236 Construction and architect-engineer contracts (Form 3062).

Subpart 3553.3—Illustration of Forms

3553.300 Scope of subpart.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7673, Mar. 2, 1990, unless otherwise noted.

3553.000 Scope of part.

This part prescribes Panama Canal Commission forms to be used in various acquisitions and other information pertaining to the forms.

Subpart 3553.1—General

3553.107 Obtaining forms.

Commission forms may be obtained from the cognizant Commission contracting office or by written request as indicated below:

(a) For all forms prescribed at 3553.213, write to: Panama Canal Commission, Logistical Support Division, APO Miami 34011-5000;

(b) For the forms prescribed at 3553.215 and 3553.236, write to: Panama Canal Commission, Construction Division, APO Miami 34011-5000.

Subpart 3553.2—Prescription of Forms

3553.200 Scope of subpart.

This subpart prescribes Commission forms for use in the acquisition of supplies and services, including construction. The subpart is arranged by subject matter in the same order as, and is keyed to, the parts of the PAR in which the form usage requirements are addressed.

3553.213 Small purchase and other simplified purchase procedures (Forms 1010, 1820, 1821, 1822, 2008, 3083, 3163, 3163-MTD, 7071, 7074).

The following forms are prescribed as stated below for use in small purchases, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *Panama Canal Form No. 1010, Purchase Order.* This form may be used by the Inventory Management Branch in lieu of Optional Forms 347 and 348 for the purposes specified in 3513.505-2(a).

(b) *Panama Canal Form No. 1820, Purchase Order.* This form may be used by the Purchasing and Contract Branch in lieu of Optional Form 347 for the purposes specified in 3513.505-2(b).

(c) *Panama Canal Form No. 1821, Purchase Requisition.* This is a 6-sheet snap-out form. The first, fifth, and sixth sheets are entitled "Purchase Requisition" (the second, third and fourth sheets are explained in following paragraph (d)). The purchase requisition is an internal document that is prescribed for use only by Commission activities to request purchasing action by the Purchasing and Contracts Branch (see 3513.505-70).

(d) *Panama Canal Form No. 1821, Request for Quotation.* This is a 6-sheet snap-out form. The second, third and fourth sheets are entitled "Request for Quotation" (the first, fifth, and sixth sheets are explained in paragraph (c) above). As specified at 3513.107(a)(4)(i), this form may be used by the Purchasing and Contracts Branch in lieu of Standard Form 18 for the solicitation of nonstock items and services.

(e) *Panama Canal Form No. 1822, Request For Quotation Continuation.* As specified at 3513.107(a)(4)(ii), this form may be used with Panama Canal Form No. 1821 when additional space is needed.

(f) *Panama Canal Form No. 2008, This Is A Request For Prices; It Is Not An Order.* As specified at 3513.107(a)(4)(iii), this form may be used by the Inventory Management Branch in lieu of Standard Form 18 for the solicitation of standard stock items.

(g) *Panama Canal Form No. 3083, Purchase Order Continuation.* As specified at 3513.505-2(c), this form may be used with Panama Canal Form No. 1820, in lieu of Optional Form 348, when additional space is needed.

(h) *Panama Canal Form No. 3163, Division Purchase Order.* As specified at 3513.505-2(d), this form may be used by all activities having contracting authority in lieu of Optional Form 347 for the decentralized procurement of supplies and services.

(i) *Panama Canal Form No. 3163-MTD, Division Purchase Order.* As specified at 3513.505-2(e), this form may be used by the Motor Transportation Division and the New Orleans Branch, Logistical Support Division in lieu of Optional Form 347 for purchases of nonstandard stock automotive repair parts that do not exceed dollar amounts established by the General Services Director.

(j) *Panama Canal Commission Form 7071, General Contract Clauses and Provisions, Small Purchases.* As specified at 3513.107(a)(4)(iv), this form shall be forwarded to prospective suppliers together with either Panama Canal Form No. 1821 or Panama Canal Form No. 2008, as applicable.

(k) *Panama Canal Commission Form 7074, Information Sheet.* As specified at 3513.107(a)(4)(iv), this form shall be forwarded to prospective suppliers together with either Panama Canal Form No. 1821 or Panama Canal Form No. 2008, as applicable.

3553.215 Contracting by negotiation (Form 6122).

As specified at 3515.804-6, *Panama Canal Form No. 6122, Cost Breakdown,* may be used by the contracting officer to require contractors to submit information for cost or price analysis in connection with requests for proposals or modifications not exceeding $25,000.

3553.236 Construction and architect-engineer contracts (Form 3062).

As specified at 3536.571, *Panama Canal Form 3062, Submittal Data For Approval,* shall be used by contractors as a transmittal document when data is to be submitted for the contracting officer's approval pursuant to FAR clause 52.236-5 or clause 3552.236-83 of this regulation.

Subpart 3553.3—Illustration of Forms

3553.300 Scope of subpart.

PAR forms are not illustrated in the PAR. Persons wishing to obtain copies of Commission forms prescribed in the PAR may do so in accordance with 3553.107.

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 3570—ACQUISITION OF PANAMANIAN SUPPLIES AND SERVICES

Sec.
3570.000 Scope of part.

Subpart 3570.1—Panamanian Preference

3570.101 Determination and definitions.
3570.102 Policy.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7674, Mar. 2, 1990, unless otherwise noted.

3570.000 Scope of part.

This part provides guidance on implementation of Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 as it relates to the preferential acquisition of supplies and services obtainable in the Republic of Panama. (The pertinent Article IX language is set forth at 3525.801-74.)

Subpart 3570.1—Panamanian Preference

3570.101 Determination and definitions.

(a) It has been determined by the Administrator of the Panama Canal Commission that the acquisition of supplies and services obtainable in the Republic of Panama is required under the conditions contemplated by Article IX.

(b) For the purposes of this determination, the following words and terms, as used in Article IX and this part 3570, shall have the meanings stated below:

Comparable in quality and price means the supplies or services (1) must conform to the purchase description, specifications, or statement of work that sets forth the Commission's requirements; and (2) can be acquired at a price equal to or lower than the price for similarly conforming supplies or services obtainable from sources outside the Republic of Panama.

Goods means manufactured or unmanufactured articles, materials and supplies.

Obtainable in the Republic of Panama means the supplies or services can be obtained from sources in the Republic of Panama.

Panamanian origin means goods that are grown, mined, or produced in the Republic of Panama; or in the case of goods which consist in whole or in part of materials from another country, have been substantially transformed by processes performed in the Republic of Panama into new and different articles of commerce with a name, character, or use distinct from that of the article or articles from which they were so transformed.

Supplies, pursuant to the definition in FAR 2.101, means "all property except land or interest in land." Accordingly, the term includes construction.

3570.102 Policy.

(a) When supplies or services can be obtained from sources both within and without the Republic of Panama, and the following conditions exist, preference shall be afforded to those sources within Panama to the maximum extent possible:

(1) The supplies or services can be provided at the time they are required;

(2) The supplies or services are comparable in quality and price to those that can be obtained from sources outside Panama; and

(3) The sources in Panama:

(i) Are determined to be responsible prospective contractors pursuant to FAR subpart 9.1, and

(ii) Can comply in all material respects with the terms and conditions of the acquisition document.

(b) In the comparison of prices with respect to subparagraph (a)(2) of this section, there shall be taken into account the cost of transport to the Republic of Panama, including freight, insurance, and handling. The cost of insurance shall be calculated at one percent (1%) of the value of the supplies, or any supplies incidental to services, in the event the contract does not require insurance.

(c) When choosing between goods from sources within Panama that are otherwise equal, preference shall be given to those goods having a larger percentage of components of Panamanian origin.

(d) When conducting an acquisition of supplies or services for which the estimated cost is not expected to exceed the small purchase limitation in FAR part 13, participation may be limited to sources in Panama unless the contracting officer determines that there is no reasonable expectation of obtaining quotations from two or more such sources that:

(1) Will be responsive to the required delivery time, and

(2) Will be comparable in quality and price to supplies or services from sources outside Panama.

(e)(1) In order to conduct an acquisition of supplies or services above the small purchase limitation and limit participation in the acquisition to sources in Panama, the contracting officer shall:

(i) Prepare and submit a class or an individual determination and findings to the Procurement Executive, and

(ii) Obtain that official's written approval of such determination and findings.

(2) The determination and findings must clearly document that:

(i) An acquisition limited to such sources would result in obtaining supplies or services at the time they are required that would be comparable in quality and price to those obtainable from sources outside Panama, or

(ii) An acquisition from sources outside Panama would be impracticable because of the nature of the acquisition (e.g., a requirements type contract where deliveries must be made within a very short time span by trucks or pipeline from stockpiles or storage facilities located in Panama).

CHAPTER 44—FEDERAL EMERGENCY MANAGEMENT AGENCY

(Parts 4400 to 4499)

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SUBCHAPTER A—GENERAL

PART 4401—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ACQUISITION REGULATION SYSTEM

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Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Source: 50 FR 31316, Aug. 1, 1985, unless otherwise noted.

4401.000 Scope of part.

This part sets forth policies and procedures concerning the Federal Emergency Management Agency Acquisition Regulation (FEMAAR) System.

Subpart 4401.1—Purpose, Authority, Issuance

4401.101 Purpose.

FEMAAR is a supplement to the Federal Acquisition Regulation (FAR) and is established for the codification and publication of uniform policies and procedures for acquisitions by FEMA.

4401.103 Applicability.

This regulation applies to all acquisitions within FEMA, but not to placement or administration of cooperative agreements or grants.

4401.104 Issuance.

4401.104-1 Publication and code arrangement.

(a) The FEMAAR is published in (1) the daily issue of the Federal Register and (2) cumulated form in the Code of Federal Regulations (CFR).

(b) The FEMAAR is issued as chapter 44 of title 48, CFR.

4401.104-3 Copies.

Copies of the FEMAAR in Federal Register and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Agency offices may request copies of the FEMAAR from the Policy and Evaluation Division, Office of Acquisition Management.

Subpart 4401.3—Agency Acquisition Regulations

4401.301 Policy.

Policies, procedures, and guidance of an internal nature may be issued through internal FEMA issuances such as manuals, standard operating procedures, directives or instructions.

4401.303 Codification and public participation.

If subject matter in FAR requires no implementation, the FEMAAR will not contain a corresponding part, subpart, section, or subsection number. FAR subject matter governs.

Subpart 4401.4—Deviations from the FAR

4401.403 Individual deviations.

The Director, Office of Acquisition Management, must authorize individual deviations in advance. Requests for authorization must:

(a) Cite the specific parts of the FAR or FEMAAR from which it is desired to deviate;

(b) Describe the deviation fully;

(c) Indicate the circumstances which require the deviation;

(d) Give reasons supporting the action requested; and

(e) Give reasons why the action is in the best interest of the Government.

4401.404 Class deviations.

The Director, Office of Acquisition Management, must authorize class deviations in advance.

4401.405 Deviations pertaining to treaties and executive agreements.

The Director, Office of Acquisition Management, is the central control point for all deviations including those pertaining to treaties and executive agreements.

Subpart 4401.6—Contracting Authority and Responsibilities

4401.600-70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

4401.601 General.

The Director, Office of Acquisition Management, is designated the head of contracting activities and FEMA's procurement executive. The Director, Office of Acquisition Management, shall establish policy throughout the agency; monitor the overall effectiveness and efficiency of the agency's contracting offices; establish controls to assure compliance with laws, regulations, and procedures; and delegate contracting officer authority. The Director, Office of Acquisition Management, shall exercise the authority delegated under 44 CFR 2.67 FEMA Organization, Functions and Delegations.

4401.603 Selection, appointment, and termination of appointment.

4401.603-2 Selection.

In the areas of experience, training and education, the following shall be required unless contracting authority is limited to a simplified purchase procedures. Waiver of any of these criteria shall be in writing:

(a) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have a minimum of two years experience performing contracting, procurement, or purchasing functions in a Government or commercial contracting office. Additionally, where a contracting officer will work in a specialized field, experience in the field shall be a criterion for the appointment.

(b) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have the equivalent of a bachelor's degree from an accedited college or institution with major studies in business administration, law, accounting, or related fields. The appointing official may waive this requirement when a candidate is otherwise qualified by virtue of extensive contract-related experience and training, business acumen, judgment, character, reputation, and ethics.

(c) An individual contracting officer or an individual appointed to a position having contracting authority shall have successfully completed training courses in both Government basic procurement and Government contract administration, each of not less than 80 class hours. Incumbents not meeting the special training requirements shall be given 24 months to meet the minimum qualification standards.

4401.603-3 Appointment.

Except for disaster-related activities and unusual circumstances as determined by the head of the contracting activity, it is policy to delegate contracting officer authority to individuals rather than to positions. The head of the contracting activity is the appointing authority. Except where the delegation of authority specifically includes the authority for further redelegation, no other delegations or redelegations may be made. Delegations of contracting officer authority shall include a clear statement of such authority and its responsibilities and limitations.

Subpart 4401.7—Determinations and Findings

4401.707-70 Signature authority.

The head of the contracting activity shall sign all class Determination and Findings (D & F's) not otherwise reserved to the agency head.

Subpart 4401.70—Procurement Contracts Versus Assistance Instruments

4401.7000 Scope of subpart.

This subpart describes the situations appropriate for the use of procurement contracts, grants, or cooperative agreements and provides examples of each.

4401.7001 Procurement contracts.

4401.7000-1 Situations for use.

Procurement contracts are to be used whenever the principal purpose of the instrument is acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government.

401.7001-2 Examples.

Procurement contracts normally will e used when the principal purpose of he relationship is:

(a) Evaluation (including research if n evaluation character) of the perormance of Government program, rojects, or grantee activity initiated y FEMA.

(b) Projects funded by administrative funds.

(c) Technical assistance rendered on behalf of the Government to any third party including those receiving grants or cooperative agreements.

(d) Surveys, studies, and research which provide specific information desired by the Government for its direct activities or for dissemination to the public.

(e) Consulting or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(f) Planning for Government use.

(g) Conferences conducted in behalf of the Government.

(h) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(i) Design or development of items for Government use or pursuant to agency definition or specifications.

(j) Generation of management information or other data for Government use.

4401.7002 Assistance.

Assistance may take the form of either grants or cooperative agreements and include:

(a) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing such assistance.

(b) Financial assistance (stimulation or support) to a specific program activity eligible for such assistance under specific legislation authorizing such assistance.

4401.7002-1 Grants.

Grants are to be used whenever the principal purpose of the relationship is to transfer money, property, services, or anything else of value to a recipient to accomplish a public purpose. The support or stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is not anticipated.

4401.7002-2 Cooperative agreements.

Cooperative agreements are to be used whenever the principal purpose of the relationship is the transfer of money, property, service, or anything else of value to recipients to accomplish a public purpose. The support or stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is anticipated.

4401.7002-3 Examples of unsubstantial involvement.

Involvement is not substantial and a grant is the proper instrument when the following types of involvement are planned:

(a) Approval of recipient plans prior to award.

(b) Normal Federal stewardship such as site visits, performance reporting, financial reporting, and audits to ensure that objectives, terms, and conditions of the grants are met.

(c) Unanticipated involvement to correct definicies in project or financial performance from the terms of the grants.

(d) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provision for the handicapped.

(e) Review of performance after completion.

(f) General administrative requirements, such as those included in OMB Circulars A-21, A-95, A-110, and A-102.

4401.7002-4 Examples of substantial involvement.

Involvement is substantial and a cooperative agreement is the proper instrument when the following types of involvement are planned:

(a) Agency review and approval of one stage before work can begin on a subsequent stage during the period covered by the cooperative agreement.

(b) Agency and recipient collaboration or joint participation in the performance of the assisted activities.

(c) Highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation and other management processes, coupled with close agency monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

(d) General administrative requirements beyond those included in OMB Circulars A-102 and A-110.

PART 4402—DEFINITION OF WORDS AND TERMS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31318, Aug. 1, 1985, unless otherwise noted.

Subpart 4402.1—Definitions

4402.100 Definitions.

Agency means the Federal Emergency Management Agency (FEMA).

Director means the Director of the Federal Emergency Management Agency.

Interagency agreement means an agreement between two or more agencies, bureaus, or departments of the Federal Government by which supplies, services, or property are provided to, or obtained from, one or more agencies, bureaus, or departments of the Federal Government. Funds are transferred between the parties as consideration for the supplies, services, or property.

Memorandum of Understanding means an agreement between two or more agencies, bureaus, or departments of the Federal Government or other entity. Funds are not transferred between the parties.

Program office means any office which generates requests for procurement actions.

Project officer means the program office representative cognizant over the technical aspects of a given procurement action.

PART 4403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 4403.1—Safeguards

Sec.
4403.101-2 Solicitation and acceptance of gratuities by Government personnel.

Sec.
4403.101-3 Agency regulations.
4403.103 Independent pricing.
4403.103-2 Evaluating the certification.

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.
4403.204 Treatment of violations.

Subpart 4403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

Subpart 4403.1—Safeguards

4403.101-2 Solicitation and acceptance of gratuities by Government personnel.

Exceptions to the prohibition against soliciting or accepting gratuities are explained in 44 CFR part 3, subpart B.

4403.101-3 Agency regulations.

FEMA "Standards and Conduct" are published in 44 CFR part 3. They include requirements for financial disclosure.

4403.103 Independent pricing.

4403.103-2 Evaluating the certification.

The Director, Office of Acquisition Management, is authorized to make the determination described in FAR 3.103-2(b)(2).

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.

Suspected violations shall be reported in the FEMA Office of the Inspector General. A report shall include all facts and circumstances relevant to the case.

4403.204 Treatment of violations.

Following review and any necessary investigation, the Inspector General shall make recommendations to the Director or a designee. If action is to be taken against a contractor, the contractor shall be given the opportunity for a hearing in accordance with FAR 3.204(b).

Subpart 4403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

The Director, Office of Acquisition Management, may authorize an exception to the policy in FAR 3.601, based on facts and circumstances provided by the program office.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 4405—PUBLICIZING CONTRACT ACTIONS

Sec.
4405.001 Policy.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

Authority: 40 U.S.C. 486(c); Reorganizational Plan No. 3 of 1978.

Source: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

4405.001 Policy.

The agency shall continually search for and develop information on sources (including small businesses owned and controlled by one or more socially or economically disadvantaged individuals) competent to provide supplies or services. Advance publicity, including use of the Commerce Business Daily to the fullest extent practicable, shall be used for this purpose. The search should include a review of data or brochures furnished by sources seeking to do business with the agency. It also should include program personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider seeking other sources by publication of proposed procurements.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Unless it is not in the Government's interest, the contracting officer shall make the solicitation source list available to firms requesting it for subcontracting opportunities on contracts exceeding the small purchase threshold.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

In accordance with 44 CFR 2.72(a) authority to approve publication of paid advertisement in newspapers has been delegated to the Director, Office of Administrative Support.

PART 4406—COMPETITION REQUIREMENTS

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Source: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

Subpart 4406.5—Competition Advocate

4406.501 Requirement.

The Chief, Policy and Planning Division, Office of Acquisition Management is designated FEMA's Competition Advocate.

PART 4408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Source: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

Subpart 4408.8—Acquisition of Printing and Related Supplies

4408.802 Policy.

Contracting officers shall obtain approval from the Director, Office of Administrative Support, FEMA's central printing authority before contracting for printing.

PART 4409—CONTRACTOR QUALIFICATIONS

Subpart 4409.4—Debarment, Suspension, and Ineligibility

Sec.
4409.404 Consolidated list of debarred, suspended, and ineligible contractors.
4409.406 Debarment.

Sec.
4409.406-1 General.
4409.406-3 Procedures.
4409.407 Suspension.
4409.407-1 General.
4409.407-3 Procedures.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

Subpart 4409.4—Debarment, Suspension, and Ineligibility

4409.404 Consolidated list of debarred, suspended, and ineligible contractors.

The Director, Office of Acquisition Management, will notify GSA, maintain records, establish procedures, and direct inquiries as required by FAR 9.404(c).

4409.406 Debarment.

4409.406-1 General.

The Chief of Staff shall be the debarring official.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4409.406-3 Procedures.

(a) Determination to debar or take other action concerning a firm or individual for a cause listed in FAR 9.406-2 shall be made by the Chief of Staff. Whenever cause for debarment becomes known to any contracting officer, the matter shall be submitted, with recommendations of the Director, Office of Acquisition Management, via the Office of General Counsel, to the Chief of Staff for appropriate action. The documented file of the case will be included in the submission.

(b) If the Chief of Staff concurs in the proposed debarment, a notice of proposal to debar shall be issued by the Chief of Staff or designee.

(c) The Chief of Staff or designee shall conduct any hearings requested in connection with debarment proceedings. The firm or individual shall have the opportunity to appear with witnesses and counsel to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, or if the firm or individual does not respond within 30 days from receipt of the written notice, the reviewing authority will make the decision based on the facts on record and such additional evidence as may be furnished by the parties involved. After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

(d) Appeals may be taken within 30 days after receipt by the firm or individual of a decision to debar. Appeals shall be filed with the Director, FEMA, who shall make a decision based on the record. The Director's decision shall be final.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4409.407 Suspension.

4409.407-1 General.

The Chief of Staff shall be the suspending official.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4409.407-3 Procedures.

(a) Any contracting officer may recommend suspension of bidders. These recommendations shall be accompanied by the documented file in the case and be submitted through the Director, Office of Acquisition Management, via the Office of General Counsel, to the Chief of Staff. The Chief of Staff shall issue the notice of suspension.

(b) The Director, Office of Acquisition Management, shall develop and maintain suspension procedures.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

PART 4412—CONTRACT DELIVERY OR PERFORMANCE

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31320, Aug. 1, 1985, unless otherwise noted.

Subpart 4412.3—Priorities, Allocations, and Allotments

4412.303 Procedures.

Rejected rated orders or ACM orders shall be sent to the Department of Commerce through the head of the contracting activity.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 4414—SEALED BIDDING

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.
4414.402 Opening of bids.
4414.406 Mistakes in bids.
4414.406-3 Other mistakes disclosed before award.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31320, Aug. 1, 1985, unless otherwise noted.

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.

(a) Envelopes or other outer coverings containing identified bids shall be stamped or otherwise marked to show the office of receipt, the time of day received, and the date. The individual receiving the bids shall then initial under the marking.

(b) A copy of the envelope or other covering bearing the documentation of a bid that was opened by mistake shall be retained in the file.

4414.402 Opening of bids.

The contracting officer, or duly authorized representative, shall be designated as the bid opening officer.

4414.406 Mistakes in bids.

4414.406-3 Other mistakes disclosed before award.

The Director, Office of Acquisition Management, is delegated the authority to make the determinations concerning mistakes in bid other than obvious clerical errors discovered prior to award. Each such determination shall be approved by the Office of General Counsel prior to notification of the bidder.

PART 4415—CONTRACTING BY NEGOTIATION

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

Sec.
4415.413 Disclosure and use of information before award.
4415.413-2 Alternate II.
4415.413-70 Policy.
4415.413-71 Release of information during the solicitation phase.
4415.413-72 Disposition of unsuccessful proposals.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.
4415.505-1 Content of unsolicited proposals.
4415.505-2 Unsolicited renewal proposals.
4415.506 Agency procedures.
4415.506-1 Receipt and initial review.

Subpart 4415.6—Source Selection

4415.612 Formal source selection.
4415.612-70 Scope.
4415.612-71 Key participants.

Subpart 4415.8—Price Negotiation

4415.803 General.

Subpart 4415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

4415.1003 Debriefing of unsuccessful offerors.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31320, Aug. 1, 1985, unless otherwise noted.

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

4415.413 Disclosure and use of information before award.

4415.413-2 Alternate II.

These alternate FAR procedures may be used if approved in writing by the head of the contracting activity.

4415.413-70 Policy.

It is FEMA policy to use information contained in proposals only for evaluation purposes unless information (a) is generally available to the public, (b) is already the property of the Government, (c) is already available to the Government with unrestricted use rights, or (d) is or has been made available to the Government without restriction.

4415.413-71 Release of information during the solicitation phase.

No information shall be released during the solicitation phase, except as follows: Each solicitation for a negotiated acquisition shall name an individual in the contracting office to respond to inquiries concerning the solicitation and evaluation of proposals resulting from the solicitation. All questions whether of a procedural or substantive nature shall be directed to that individual. No one else shall exchange comments with offerors or potential offerors. Questions requiring clarification of substantive portions of the solicitation shall be answered by amendment of the solicitation. A copy of the amendment shall be sent to each recipient of the solicitation.

4415.413-72 Disposition of unsuccessful proposals.

Unsuccessful proposals shall be disposed of as follows:

(a) All but one copy of each unsuccessful proposal shall be destroyed as soon as practicable after contract award. The one remaining copy of each shall be retained in the official contract file.

(b) Unsuccessful proposals shall not be used for purposes other than internal reference unless (1) written permission has been obtained from the offeror or (2) the proposal expressly states that unrestricted use is given to the Government regardless of its success in the competition.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.

This subpart sets forth procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals.

4415.505-1 Content of unsolicited proposals.

FEMA's Appropriation Act (Public Law 100—404, Section 407) requires the contractor to cost share if a research contract results from an unsolicited proposal. This requirement may be waived only when it would not be equitable for the Government to require cost sharing. To waive, (a) the offeror must certify in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research and that it has no means of recovering any cost on such projects; and (b) the contracting officer must make a written determination that there is no measurable gain to the performing organization and no mutuality of interest. This determination shall be placed in the contract file. (See 4416.303.)

[50 FR 31320, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4415.505-2 Unsolicited renewal proposals.

Renewal proposals, i.e., those for the extension or augmentation of current contracts, are subject to the same FAR and FEMA regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

[55 FR 28207, July 10, 1990]

4415.506 Agency procedures.

(a) The Office of Acquisition Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals. Unsolicited proposals and requests for additional information regarding their preparation shall be submitted to: Federal Emergency Management Agency, Office of Acquisition Management, Policy & Evaluation Division, 500 C Street SW, room 726, Washington, DC 20472.

(b) Unsolicited proposals submitted to FEMA program, regional or field offices, or misdirected proposals, shall be immediately fowarded by recipients to the Headquarters Office of Acquisition Management.

(c) Unsolicited proposals shall be submitted in an original and five copies at least six months in advance of the date the offeror desires to begin work so that there will be enough time to evaluate the proposal and negotiate a contract.

[50 FR 31320, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4415.506-1 Receipt and initial review.

(a) The Office of Acquisition Management shall acknowledge an unsolicited proposal. Simultaneously, copies of the proposal shall be sent to the appropriate program offices for evaluation.

(b) *Information Requirements.* The Office of Acquisition Management shall keep records of unsolicited proposals received and shall provide prompt status information to requestors. The records shall include, as a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year, the identity of the proposers and the office to which each was referred. These numbers shall be broken out by source (large business, small business, university, or nonprofit institutions).

[50 FR 31320, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

Subpart 4415.6—Source Selection

SOURCE: 55 FR 28207, July 10, 1990, unless otherwise noted.

4415.612 Formal source selection.

4415.612-70 Scope.

(a) Formal source selection procedures shall apply to competitively negotiated acquisition when the estimated cost exceeds $25,000.

(b) Formal source selection procedures do not apply to the acquisition of Architect-Engineer Services, acquisition from other Government agencies (including State and local), or any other acquisition which is specifically exempted by the Director.

4415.612-71 Key participants.

(a) A proposal evaluation team shall be formed to conduct the technical evaluation of proposals. For acquisitions estimated to cost $10 million or less, the team shall be called the Technical Evaluation Panel (TEP) and shall consist of at least three (3) voting members. For acquisitions in excess of $10 milion, or those whose estimated cost does not exceed $10 million, but the selected source is likely to receive funding for future phase(s) of the same project, and the aggregate amount of such funding (including the current acquisition) is estimated to exceed $10 million, the team shall be called the Source Evaluation Board (SEB) and shall consist of at least five (5) voting members.

(b) The Source Selection Official or the Contracting Officer, depending upon the dollar amount of the proposed award and any anticipated additions to it, shall select a source for contract award. For acquisitions estimated to exceed $10 million, the program head, i.e., Associate Director/Administrator, of the acquiring office shall be the Source Selection Official. For acquisitions estimated to cost $10 million or less, the Contracting Officer shall be the Source Selection Official.

Subpart 4415.8—Price Negotiation

4415.803 General.

When all efforts to get a contractor to agree to a reasonable price or fee have failed, the contracting officer shall refer the matter to the head of the contracting activity.

Subpart 4415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

4415.1003 Debriefing of unsuccessful offerors.

Any unsuccessful offeror may write for a debriefing within two months after contract award. The contracting officer shall provide the debriefing.

PART 4416—TYPES OF CONTRACTS

Subpart 4416.3—Cost-Reimbursement Contracts

Sec.
4416.303 Cost-sharing contracts.

Subpart 4416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

4416.603 Letter contracts.
4416.603-3 Limitations.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31321, Aug. 1, 1985, unless otherwise noted.

Subpart 4416.3—Cost-Reimbursement Contracts

4416.303 Cost-sharing contracts.

(a) This subsection sets forth basis guidelines governing cost-sharing contract.

(b)(1) Cost sharing with non-Federal organizations shall be encouraged in contracts for basic or applied research in which both parties have considerable interest.

(2) Contracting officers shall assure themselves of the following in determining contract type:

(i) The research effort has more than minor relevance to the non-Federal activities of the performing organization and is not primarily a service to the Government.

(ii) The performing organization has adequate non-Federal sources of funds from which to make a cash contribution.

(iii) The performing organization is engaged primarily in production or other service activities, as opposed to research and development, and is in a favorable position to make a cost contribution.

(iv) The principal purpose of the contract is research.

(v) Payment of the full cost of the project is not necessarily in order to obtain the services of the particular organization.

(3) FEMA's Appropriation Act requires cost sharing by the contractor under research contracts resulting from unsolicited proposals. See 4415.505-1.

(c) Guidelines for determining the amount of cost sharing.

(1) For educational institutions and other not-for-profit or non-profit organizations, cost sharing may vary from 1 to 50 percent of the costs of the project. In some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic-year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(2) The amount of cost participation by commercial or industrial organizations may vary from 1 percent or less to more than 50 percent of total project cost, depending upon the extent to which the research effort is likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. Recognize, however, that organizations predominately engaged in research and development with little other activity may not be able to derive a monetary benefit from the research under Federal agreements.

(3) A fee will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing normal fees on the research. However, if the research is expected to be of major value to the performing organization and if cost sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee rather than sharing the costs of the project.

(4) Each cost-sharing contract negotiated shall contain the clause in 4452.216-70.

[50 FR 31321, Aug. 1, 1985, as amended at 55 FR 28208, July 10, 1990]

Subpart 4416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

4416.603 Letter contracts.

4416.603-3 Limitations.

A letter contract may be used only if the head of the contracting activity executes a determination and finding that no other contract type is suitable.

PART 4417—SPECIAL CONTRACTING METHODS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31322, Aug. 1, 1985, unless otherwise noted.

Subpart 4417.70—General

4417.7001 Preference for local contractors.

(a) This subsection establishes policies relating to local contractor preference to receive contract awards resulting from competitive solicitations under a Presidentially declared major disaster or emergency operation.

(b) The geographic areas to which local contractor preference shall apply are those affected by the Presidentially declared disaster and designated in the FEDERAL REGISTER by the Associate Director, State and Local Programs and Support, or his designee. Geographical areas shall be identified by county or other political subdivision.

(c) Pursuant to the provisions of Pub. L. 93-288, the provisions set forth in 4452.217-70 shall be included in each competitive solicitation for disaster relief response.

(d) If the contracting officer determines it to be in the best interest of the Government, the provision set forth in 4452.217-70 need not be included in solicitations. Such determination shall be documented in the contract file with a findings and determination signed by the contracting officer and approved by the head of the contracting activity.

(e) If the contracting officer makes the determination of paragraph (d) above, local participation may be encouraged by:

(1) Setting the procurement aside for labor surplus area if the disaster area has been established as a labor surplus area;

(2) Advertising only in the local disaster area; and/or

(3) Dividing large requirements into several smaller requirements.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 4419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31322, Aug. 1, 1985, unless otherwise noted.

Subpart 4419.2—Policies

4419.201 General policy.

(a) The Director, Office of Personnel and Equal Opportunity, is also the Director, Office of Small and Disadvantaged Business Utilization.

(b) The Chief, Policy and Evaluation Division, Office of Acquisition Management, is the small business technical advisor.

(c) Each contracting officer is a small and disadvantaged business utilization specialist.

[50 FR 31322, Aug. 1, 1985, as amended at 55 FR 28208, July 10, 1990]

PART 4424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31322, Aug. 1, 1985, unless otherwise noted.

Subpart 4424.2—Freedom of Information Act

4424.202 Policy.

FEMA's Freedom of Information Act policy is codified at 44 CFR part 5.

PART 4426—OTHER SOCIOECONOMIC PROGRAMS

Sec.
4426.101 General policy.
4426.102 Accessibility of meetings, conferences and seminars to persons with disabilities.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

4426.101 General policy.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits Federal agencies from discriminating against qualified persons on the grounds of disability. The law not only applies to internal employment practices but extends to agency interaction with members of the public who participate in FEMA programs. (FEMA's implementation of section 504 of this Act is codified at 44 CFR part 16.)

[55 FR 28208, July 10, 1990]

4426.102 Accessibility of meetings, conferences and seminars to persons with disabilities.

It is FEMA's policy to extend the provisions of the Rehabilitation Act of 1973, as amended, to vendors who interact with the public while under contract to FEMA. Therefore, FEMA Clause 4452.226-01, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, shall be included in FEMA contracts over $25,000 when in the performance of such contract the contractor will plan meetings, seminars and conferences which may be attended by persons with disabilities.

[55 FR 28208, July 10, 1990]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 4429—TAXES

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31322, Aug. 1, 1985, unless otherwise noted.

Subpart 4429.1—General

4429.101 Resolving tax problems.

(a) The Office of General Counsel is responsible, with FEMA, for handling all tax problems. It also is responsible for asking the Department of Justice for representation of intervention in proceedings concerning taxes.

(b) The contracting officer shall request, in writing, the assistance of the Office of General Counsel in resolving a tax problem. The request shall detail the problem and include supporting information. The Office of General Counsel shall inform the contracting officer of the disposition of the tax problem and the contracting officer will tell the contractor.

PART 4432—CONTRACT FINANCING

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31322, Aug. 1, 1985, unless otherwise noted.

Subpart 4432.4—Advance Payments

4432.402 General.

The head of the contracting activity has responsibility and authority to make findings and determinations and to approve or disapprove contract terms.

PART 4433—PROTESTS, DISPUTES AND APPEALS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 55 FR 28208, July 10, 1990, unless otherwise noted.

Subpart 4433.103—Protests to the Agency

4433.103 Protests to the agency.

(a) Protests should be filed on a timely basis to the Contracting Officer specified in the solicitation or contract. Protests are considered timely if, when based on alleged improprieties in a solicitation which are apparent prior to the bid/proposal closing time, they are filed not later than the closing date, and in other cases they are filed within 10 working days after the basis of the protest is known or should have been known whichever is earlier.

(b) If a protest is received prior to award, the Contracting Officer shall notify all offerors within one full working day after consultation with the Office of General Counsel (OGC). An award will not be made unless a written determination is approved by the Head of the Contracting Activity in accordance with the criteria set forth in FAR 33.103.

(c) If a protest is received after award, the Contracting Officer shall give careful consideration to suspending contract performance if it appears likely that the award may be invalidated and the Government's interest will not be harmed by a delay in the receipt of goods or services. The Contracting Officer's determination to suspend performance should be made in writing and approved by the Head of the Contracting Activity after consultation with OGC. If the decision is to proceed with contract award or continue with contract performance, the Contracting Officer shall include the written findings in the file and shall give written notice of the decision to the protestor and other interested parties.

(d) The Contracting Officer/Contract Specialist shall prepare the final decision for approval by the Head of the Contracting Activity. The protestor shall be notified of the final decision regarding its protest within 30 working days after receipt of the protest.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 4435—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31322, Aug. 1, 1985, unless otherwise noted.

4435.003 Policy.

Cost-sharing policy for research and development contracts is stated in 4415.502-70.

PART 4436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 4436.6—Architect-Engineer Services

Sec.
4436.602-2 Evaluation boards.
4436.602-4 Selection authority.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31322, Aug. 1, 1985, unless otherwise noted.

Subpart 4436.6—Architect-Engineer Services

4436.602-2 Evaluation boards.

(a) Each architect-engineer evaluation board, permanent or ad hoc, shall have at least five voting members and one alternate. These will be Federal employees. A majority of the voting members will be from the program office.

(b) During the selection process, a board member or advisor may have, or appear to have, a conflict of interest regarding a firm in the competition. Immediately upon becoming aware of a potential conflict or an appearance of a conflict, the member or advisor shall notify the board chairperson who shall, in turn, inform the Office of General Counsel. The Office of General Counsel shall make a final determination on the conflict issue.

(c) The evaluation board is to be insulated from outside pressures. Information concerning board deliberations shall be divulged only to persons having a need-to-know.

4436.602-4 Selection authority.

(a) Heads of program offices which may require architect-engineer services are designated as selection authorities for acquisition of architect-engineer services.

(b) A determination shall be sent to the contracting officer listing the selected firms in order of preference.

PART 4450—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 4450.2—Delegation of and Limitations on Exercise of Authority

Sec.
4440.201 Delegation of authority.
4450.202 Contract adjustment boards.

AUTHORITY: 50 U.S.C. 1431-1435; E.O. 10789; E.O. 12148.

SOURCE: 50 FR 31322, Aug. 1, 1985, unless otherwise noted.

Subpart 4450.2—Delegation of and Limitations on Exercise of Authority

4450.201 Delegation of authority.

All authority granted by 48 CFR 50.101 may be exercised by the Director of the Federal Emergency Management Agency. Such authority to approve, authorize, and direct appropriate action under this Part and to make all appropriate determinations and findings which do not obligate the United States in excess of $50,000 are delegated to the Director, Office of Acquisition Management. Such authority to approve, and direct appropriate action under this Part and to make all appropriate determinations and findings which may obligate the United States in excess of $50,000 are delegated to the FEMA Contract Adjustment Board. The limitations contained in 48 CFR 50.201 and 50.202 apply.

4450.202 Contract adjustment boards.

As cases arise under the Act, the Director of FEMA may appoint, as needed, a FEMA Contract Adjustment Board consisting of one senior staff member, not otherwise involved with the action under consideration, from each of the following offices:

(a) Acquisition Management, who shall act as Chairperson

(b) General Counsel

(c) Comptroller.

SUBCHAPTER H—CLAUSES AND FORMS

PART 4452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 4452.2—Texts of Provisions and Clauses

Sec.

4452.216-70 Consideration and payment (Cost-Sharing).

4452.217-70 Preference for local contractors in Presidentially declared major disasters or emergencies.

4452.226-1 Accessibility of meetings, conferences and seminars to persons with disabilities.

4452.227-70 Reproduction of reports.

4452.227-71 Coordination of federal reporting requirements.

4452.227-72 Publication.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31323, Aug. 1, 1985, unless otherwise noted.

Subpart 4452.2—Texts of Provisions and Clauses

4452.216-70 Consideration and payment (Cost-Sharing).

As prescribed in 4416.303, include the following clause in research and development contracts with non-Federal organizations:

CONSIDERATION AND PAYMENT (COST-SHARING) (MAR 1989)

(a) The estimated cost for the performance of this contract is $_____. The contractor agrees to bear without reimbursement by the Government ___% of the cost for performance hereunder. Such cost sharing shall be effected as set forth in paragraph (b) below.

(b) Public vouchers or invoice shall be submitted in an original and five (5) copies and shall show the total cost incurred for the period for which the voucher or invoice is submitted, the cumulative total of costs incurred through the billing period, and the percentage of costs to be reimbursed by the Government. However, the Government is not obligated to reimburse the contractor for the Government's share of the costs in excess of _____% of such amount. The Government shall not be obligated to reimburse the contractor for the Government's share of the costs in excess of $_____ nor is the contractor obligated by this contract to expend his own funds in excess of $_____.

(End of clause)

[55 FR 28208, July 10, 1990]

4452.217-70 Preference for local contractors in Presidentially declared major disasters or emergencies.

Pursuant to the provisions of Pub. L. 93-288 and 4415.105-71, the following provisions shall be included in each competitive solicitation for on-site disaster relief response:

PREFERENCE FOR LOCAL CONTRACTORS (APR 1984)

In awarding any contract pursuant to this solicitation, the Government shall give preference to local organizations, firms, and individuals residing or doing business primarily in the geographic area identified as the disaster area.

The contracting officer reserves the right to request offerors to furnish documentation to demonstrate eligibility for local contractor preference. To be eligible, the offeror shall have been residing (in the case of individuals) or doing the major portion of its business (in the case of business entities) in the disaster area.

An offeror for which eligibility is established (local offeror) shall be permitted to meet the lowest price received from an otherwise eligible non-local offeror, provided that the proposed price from the local offeror does not exceed 130 percent of the price of the non-local offeror. The lowest priced local offeror within 130 percent of the lowest non-local offeror shall have the first chance to meet the non-local price. If the local offeror meets the lowest non-local price and is determined to be responsible, award shall be made. If the non-local offer is not met, the next lowest local offeror within 130 percent shall have the chance to meet the lowest non-local price. This process shall continue until award is made to a local offeror within the 130 percent requirement or the supply of local offerors is exhausted and award made to the lowest non-local offeror.

(End of clause)

4452.226-1 Accessibility of meetings, conferences and seminars to persons with disabilities.

Include the following clause in contracts under which the contractor will plan meetings, conferences and seminars which may be attended by persons with disabilities.

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (JAN 1989)

The Contractor agrees as follows:

(a) *Planning.* The Contractor will develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth below. This plan shall include a provision for ascertaining the number and types of disabled individuals planning to attend the meeting, conference, or seminar. The plan shall be submitted to the Contracting Officer for approval prior to initiating action. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars may be submitted in lieu of separate plans.

(b) *Facilities.* Any facility to be utilized for meetings, conferences, or seminars in performance of this contract shall be accessible to persons with disabilities. The Contractor shall determine, by an on-site inspection if necessary, that the following minimum accessibility requirements are met, or suitable modifications are made to meet these requirements, before the meeting:

(1) *Parking.* (i) Where parking is available on or adjacent to the site one 12' wide space must be set aside for the car of each mobility impaired attendee. The space need not be permanently striped but may be temporarily marked by signs, ropes, or other means satisfactory to carry out this provision.

(ii) Where parking is not available on or adjacent to the site, valet parking or other alternative means must be available to assist disabled attendees. Alternate means must be satisfactory in the judgment of the Contracting Officer.

(2) *Entrances.* (i) "Entrances" shall include at least one accessible entrance from the street/sidewalk level, and at least one accessible entrance from any available parking facility.

(ii) The entrance shall be level or accessible by ramp with an incline that allows independent negotiation by a person in a wheelchair. In general, the slope of the incline shall be no more than 1" rise per foot of ramp length (1:12).

(iii) Entrance doorways shall be at least 30" in clear width and capable of operation by persons with disabilities. Revolving doors, regardless of foldback capability, will not meet this requirement.

(3) *Meeting Rooms.* (i) Meeting room access from the main entrance area must be level or at an independently negotiable incline (approximately 1:12) and/or served by elevators from the main entrance level. All elevators shall be capable of accommodating a wheelchair 29" wide by 45" long.

(ii) Meeting rooms shall be on one level or, if on different levels, capable of being reached by elevators or by ramps that can be independently negotiated by a person in a wheelchair. Doorways to all meeting rooms shall be at least 30" in clear width.

(iii) The interior of the meeting room shall be on one level or ramped so as to be independently negotiable for a person in a wheelchair.

(iv) Stages, speaker platforms, etc. which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramps may not necessarily be independently negotiable if space does not permit. However, any slope over 1:12 must be approved by the Contracting Officer. Each case is to be judged on its own merits.

(v) If a meeting room with fixed seating is utilized, seating arrangements for persons in wheelchairs shall be made so that these persons are incorporated into the group rather than isolated on the perimeter of the group.

(4) *Restrooms.* (i) Restrooms shall have level access, signs indicating accessibility, and doorways at least 30" in clear width.

(ii) Sufficient turning space within restrooms shall be provided for independent use by a person in a wheelchair 29" wide by 45" long. A space 60" by 60" or 63" by 56" of unobstructed floor space as measured 12" above the floor is acceptable by standard; other layout will be accepted if it can be demonstrated that they are usable as indicated.

(iii) There will be a restroom for each sex or a unisex restroom with at least one toilet stall capable of accommodating a wheelchair 29" wide by 45" long (by standard, the minimum is 3'-0" by 43'-83"), with outswinging door or private curtains. Wall mounted grab bars are required.

(iv) When separate restrooms have been set up for mobility impaired persons, they shall be located adjacent to the regular restrooms and shall be fully accessible.

(5) *Eating Facilities.* (i) Eating facilities in the meeting facility must be accessible under the same general guidelines as are applied to meeting rooms.

(ii) If the eating facility is a cafeteria, the food service area (cafeteria line) must allow sufficient room for independent wheelchair movement and accessibility to food for persons in wheelchairs, and cafeteria staff shall be available to assist disabled persons.

(6) *Overnight Facilities.* If overnight accommodations are required:

(i) Sufficient accessible guest rooms to accommodate each attendee who is disabled shall be located in the facility where the meeting, conference, or seminar is held, or in a facility housing the attendees which is conveniently located hereby, whichever is satisfactory to the Contracting Officer.

(ii) Overnight facilities shall provide for the same minimum accessibility requirements as the facility utilized for guest room access from the main entrance area shall be level, ramped at an independently negotiable incline (1:12), and/or served by elevators capable of accommodating a wheelchair 29" wide by 45" long.

(iii) Doorways to guest rooms, including the doorway to the bathroom, shall be at least 30" in clear width.

(iv) Bathrooms shall have wall mounted grab bars at the tub and water closet.

(v) Guest rooms for persons with a disability shall be provided at the same rate as a guest room for other attendees.

(7) *Water Fountains.* Water fountains shall be accessible to disabled persons, or have cup dispensers for use by persons in wheelchairs.

(c) Provisions of Services for Sensory Impaired Attendees.

(1) The Contractor, in planning the meeting, conference, or seminar shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to sensory impaired persons attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that sensory impaired persons may contact a specific person(s), at a specific address and phone number(s), to make their service requirements known. The phone number(s) shall include a teletype number for the hearing impaired.

(2) The Contractor shall provide, at no cost to the individual, those services required by persons with sensory impairments to insure their complete participation in the meeting, conference, or seminar.

(3) As a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For hearing impaired persons, qualified interpreters. Provisions will also be made for volume controlled phone lines and, if necessary, transportation to local teletype equipment to enable hearing impaired individuals to receive and send meeting related calls. If local teletype equipment is not available, the Contractor shall provide onsite teletype equipment. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For vision impaired persons, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for the visually and hearing impaired. Readers, braille translations, and/or tape recordings are all acceptable. These materials shall be available to sensory impaired individuals upon their arrival.

(4) The Contractor is responsible for making every effort to ascertain the number of sensory impaired individuals who plan to attend the meeting, conference, or seminar. However, if it can be determined that there will be no sensory impaired person (deaf and/or blind) in attendance, the provision of those services under paragraph (c) for the non-represented group, or groups, is not required.

(Approved by the Office of Management and Budget under control number 3067-0213)

(End of clause)

[55 FR 28208, July 10, 1990]

4452.227-70 Reproduction of reports.

Include the following clause in the contract when the product is a report, data or other written material.

REPRODUCTION OF REPORTS (APR 1984)

Reproduction of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is to be determined by multiplying pages times copies. A production unit is one sheet, size 8½×11 inches or less, printed on one side only, and in one color. All copy preparation to produce camera-ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used on single-unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera-ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written material.

(End of clause)

4452.227-71 Coordination of Federal reporting requirements.

The following clause shall be included in contracts when appropriate:

COORDINATION OF FEDERAL REPORTING SERVICES (Apr 1984)

In the event that it is a contractual requirement to collect information from 10 or more public respondents, the provisions of 44 U.S.C. chapter 35 (Coordination of Federal Reporting Requirements), shall apply to this contract. The contractor shall obtain through the project Officer the required office of Management and Budget clearance before making public contacts for the collection of data or expending any funds for such collection. The authority to proceed with the collection of data from public respondents and the expenditure of funds therefore shall be in writing signed by the Contracting Officer.

(End of clause)

4452.227-72 Publication.

The following clause shall be used in all contracts under which it is anticipated that a report will be a product.

PUBLICATION (Apr 1984)

(a) Definition. For the purpose of this clause "publication" includes (1) any document containing information intended for public consumption or (2) the act of, or any act which may result in, disclosing information to the public.

(b) General. The results of the research and development and studies conducted under this contract are to be made available to the public through dedication, assignment to the Government, or other such means as the Director of the Federal Emergency Management Agency shall determine.

(c) Reports furnished the Government. All intermediate and final reports of the research and development and studies conducted hereunder shall indicate on the cover or other initial page that the research and development and studies forming the basis for the report were conducted pursuant to a contract with the Federal Emergency Management Agency. Such reports are official Government property and may not be published or reproduced (in toto, in verbatim excerpt, or in a form approximating either of these) as an unofficial paper or article. The contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish such reports in whole or in part in a non-Government publication only in accordance with this paragraph (c) and paragraph (e)(1) of this clause.

(d) Publication by Government. The Government shall have full right to publish all information, data, and findings developed as a result of the research and development and studies conducted hereunder.

(e) Publication by contractor on technical personnel.

(1) Publication in whole or in part of contractor's reports furnished the Government. Unless such reports have been placed in the public domain by Government publication, the contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish a report furnished the Government, in toto or in verbatim excerpt, but consistent with paragraph (c) of this clause may not secure copyright therein, subject to the following conditions and the conditions in paragraph (e)(4) and paragraph (f).

(i) During the first six months after submission of the full final report, if written permission to publish is obtained from the contracting officer.

(ii) After six months following submission of the full report, and if paragraph (e)(3) is inapplicable, if a foreword or footnote in the non-Government publication indicates the source of the verbatim material.

(2) Publication, except vebatim excerpts, concerning or based in whole or in part on results of research and development and studies hereunder. The contractor or technical personnel may issue a publication concerning or based in whole or in part on the results of the research and development and studies conducted under this contract and may secure copyright therein, but in so publishing is not authorized thereby to inhibit the unrestricted right of the Director of the Federal Emergency Management Agency to disclose or publish, in such manner as he may deem to be in the public interest, the results of such research and development and studies to the following conditions and the requirement in paragraph (e)(4):

(i) During the first six months after submission of the full final report, and if paragraph (e)(3) is inapplicable, if written waiver of the waiting period is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, subject to Government exercise of an option that the publication contain a foreword or initial footnote substantially as follows:

> The (research) (development) (studies) forming (part of) the basis for this publication were conducted pursuant to a contract with the Federal Emergency Management Agency. The substance of such (research) (development) (studies) is dedicated to the public. The author and publisher are solely responsible for the accuracy of statements or interpretations contained therein.

(3) General conditions if FEMA determines that contractor's final report contains patentable subject matter developed in con-

tract performance. If the contracting officer determines that the contractor's full final report contains patentable subject matter developed in the performance of this contract and so notifies the contractor in writing prior to six months from date of submission of such report, no publication of verbatim excerpts from contractor's reports or publication concerning or based in whole or in part on the results of the research and development and studies hereunder shall be made without the written consent of the contracting officer.

(4) Copies of contractor and technical personnel publications to be furnished the Government. The contractor or technical personnel will furnish the contracting officer six copies of any publications which are based in whole or in part on the results of the research and development and studies conducted under this contract.

(f) Administratively confidential information. The contractor shall not publish or otherwise disclose, except to the Government and except matters of public record any information or data obtained hereunder from private individuals, organizations, or public agencies in a publication whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment.

(g) Inclusion of provisions in contractor's agreements. The contractor shall include provisions appropriate to effectuate the purposes of this clause in all contracts of employment with persons who perform any part of the research or development or study under this contract and in any consultant's agreements or subcontracts involving research or development or study thereunder.

(End of clause)

CHAPTER 51—DEPARTMENT OF THE ARMY ACQUISITION REGULATIONS

(Parts 5100 to 5199)

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PART 5108—REQUIRED SOURCES OF SUPPLIES AND SERVICES

5108.070 Definitions.

As used in this section:

Memorandum of Understanding Planned Producer means an industrial firm which has indicated its willingness to produce specified military items in a declared national emergency by completing a Memorandum of Understanding with an accompanying Industrial Preparedness Program Production Capacity Survey (DD Form 1519 TEST). The firm is eligible to be solicited for all buys of the item(s) over $25,000 excluding acquisitions for which competition is restricted to the Restricted Specified Base or Limited Fee Planned Producers in accordance with an approved Justification and Approval.

Limited Fee Planned Producer means an industrial firm which is contractually bound by inclusion of AFARS 5152.208-9001 in their contract to maintain production capacity for a negotiated length of time, to conduct subcontractor planning, and to produce specified military items in the event of a declared national emergency or in the event of a declared national emergency or contingencies short of a declared national emergency. The firm is eligible to be solicited for all buys of the item(s) over $25,000 except acquisitions for which competition is restricted to the Restricted Specified Base in accordance with an approved Justification and Approval.

Restricted Specified Base Planned Producer means an industrial firm which is contractually bound to maintain production capacity for a negotiated length of time, to conduct subcontractor planning, and to produce specified military items in the event of a declared national emergency, or contingencies short of a declared national emergency. The firm is eligible to be solicited for all buys of the item(s) over $25,000.

(g)(1)(i) Solicitation of Memorandum of Understanding Planned Producers in all acquisitions over $25,000 which are for items for which they have been designated as a Memorandum of Understanding Planned Producer except those restricted to the Restricted Specified Base Planned Producers or Limited Fee Planned Producers in accordance with an approved Justification and Approval.

(ii) Solicitation of Limited Fee Planned Producers in all acquisitions over $25,000 which are for items for which they have been designated as a Limited Fee Planned Producer, except those restricted to the Restricted Specified Base.

(iii) Solicitation of Restricted Specified Base Planned Producers in all acquisitions over $25,000 which are for items for which they have been designated as a Restricted Specified Base Planned Producer.

(g)(4) The clause at 5152.208-9001 is to be used for all contracted planning efforts.

[54 FR 38682, Sept. 20, 1989]

PART 5119—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 5119.10—Small Business Competitiveness Demonstration Program

Sec.

5119.1001 General.
5119.1002 Definitions.
5119.1003 Purpose.
5119.1004 Participating agencies.
5119.1005 Applicability.
5119.1070 Procedures.
5119.1070-2 Emerging small business set-aside.
5119.1070-3 Identification and reporting.
5119.1071 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, FAR 1.301 and DOD FAR Supplement 201.301.

SOURCE: 54 FR 15410, Apr. 18, 1989, unless otherwise noted.

Subpart 5119.10—Small Business Competitiveness Demonstration Program

5119.1001 General.

This subpart implements Pub. L. 100-656, section 722, "Expanding Small Business Participation in Dredging" (the Dredging Program). The Program will be conducted through 30 September 1992.

5119.1002 Definitions.

(S-90) "Emerging Small Business Reserve Amount" (ESBRA) means the dollar threshold for contracting opportunities in dredging, below which competition shall be conducted exclusively among emerging small business concerns. This amount is set forth in 5119.1070-2(a)(S-90).

5119.1003 Purpose.

(c)(S-90) The purpose of the Dredging Program is to—

(i) Expand small business and emerging small businesses (ESB) participation in contracting opportunities for dredging through restricted competition.

(ii) Demonstrate the existence of a sufficient number of small businesses and ESBs which meet the current size standard for Standard Industrial Code (SIC) Code 1629 (Dredging and Surface Cleanup Activities) as an indicator of the adequacy of the current size standard.

5119.1004 Participating agencies.

Participation in this Dredging Program is limited to the Department of the Army, Corps of Engineers.

5119.1005 Applicability.

(S-90) The program shall apply to solicitations issued by the Department of the Army Corps of Engineers buying activities for the procurement of dredging under SIC 1629 (Dredging and Surface Cleanup Activities), limited to Federal Procurement Data Systems (FPDS) codes Y216 and Z216. This includes both maintenance dredging and new start (new work) construction dredging. Dredging to be performed by Government forces utilizing the Federally owned fleet pursuant to 33 U.S.C. 622 is not subject to the program.

5119.1070 Procedures.

5119.1070-2 Emerging small business set-aside.

(a)(S-90) Solicitations for dredging shall be set-aside for exclusive competition among ESBs when the estimated award value is equal to or less than the emerging small business reserve amount (ESBRA) of $600,000. (Except that dredging acquisitions shall continue to be considered for placement under the 8(a) program (see FAR Subpart 19.8) and for small disadvantaged business set-asides (see DFARS 219.502-72)). The ESBRA applies only to new awards. Modifications or follow-on awards to contracts having an initial award value in excess of the ESBRA are not subject to this requirement. The set-aside requirements in DFARS 219.1070-2 (a) and (b) for designated industry groups acquisitions valued at $25,000 or less shall be complied with for all dredging program set-asides.

(S-90) The contracting office shall include the applicable SIC Code and dollar size standard in the synopsis of proposed procurement as published in the Commerce Business Daily (CBD), in the presolicitation notice (construction contract) SF 1417 when issued, and in the solicitation documents.

(S-91) The contracting officer shall consider use of the following initiatives to increase participation by small businesses and emerging small businesses:

(1) Specifying of contract requirements and contractual terms and conditions which are conducive to competition among small business and emerging small business concerns, consistent with the mission or program requirements of the Department of the Army, Corp of Engineers.

(2) Encouraging joint ventures, teaming agreements, and similar arrangements consistent with the Small Business Act (15 U.S.C. 637(d)) for the purpose of including small business concerns in contracting opportunities. However, no such joint venture shall exceed the applicable size standard.

(3) Making maximum use of subcontracting through plans negotiated and enforced pursuant to section 8(d) of the small business act. Goals may be specified in solicitations stating minimum percentages of subcontracting.

5119.1070-3 Identification and reporting.

(b) Reporting shall be done in accordance with DFARS 204.6 designated industry group requirements. Block B12A, DD Form 350, shall contain either the FPDS Code Y216 or Z216, as applicable, per 5119.1005 (S-90).

5119.1071 Solicitation provisions and contract clauses.

(a) DFARS provision 252.219-7012 shall be inserted in all solicitations issued under the Small Business Dredging Program (SIC 1629, limited to FPDS Service Codes Y216/Z216).

(b) DFARS clause 252.219-7013 shall be inserted in all solicitations and contracts set-aside for emerging small businesses in accordance with 5119.1070-2(a)-(S-90).

PART 5145—GOVERNMENT PROPERTY

5145.301 Definitions.
5145.302-3 Other contracts.
5145.303 Providing material.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

SOURCE: 54 FR 39538, Sept. 27, 1989, unless otherwise noted.

5145.301 Definitions.

Other Government Property means all property, other than Special Use Property as defined below, which may be offered to a contractor for use in performance of installation support services contracts.

Special Use Property means property that is (a) "agency peculiar property", (b) necessary for mobilization requirements; or (c) property for which it has been determined that title should remain with the Government.

5145.302-3 Other contracts.

(S-90)(1) When it is determined that contractor use of existing Government facilities, other than special use property, in the performance of installation support services contracts, is in the best interest of the Government, the Government facilities will be offered to a contractor for use in the performance of the Government contract. Facilities provided to a contractor under this authority will not be replaced by the Government when they can no longer be used by the contractor. Nevertheless, it will be the contractor's responsibility to continue performance in accordance with the terms of the contract.

(2)(i) New facilities shall not be purchased in order to provide them to contractors. Prior to offering existing facilities under this authority, a contracting officer shall make a written determination, based on the detailed justification provided by the approving officials and program/project manager, that such use is in the best interest of the Government. The written determination shall be kept in the contract file.

(ii) Existing facilities offered for contractor use will be offered to all bidders/offerors for their consideration in the preparation of their bids and offers. Bidders/offerors may choose to use any or all of the facilities offered.

(3) When it is determined that contractor use of special use property in the performance of installation support services contracts is in the best interest of the Government, such property will be provided. It will be accounted for and managed under the appropriate Government property clause. For example, FAR 52.245-2 for fixed-price contracts or FAR 52.245-5 for cost-reimbursement contracts and any appropriate provision from FAR 52.245-11, Facilities Use Clause.

(S-91) Required Government property clauses for other than facilities contracts.

(1) In addition to the clauses at FAR 52.245-2 and 52-245-19, the Contracting Officer shall insert the clause at 5152.245-9000, Government Property for Installation Support Services (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and Government property will be provided without being replaced by the Government.

(2) The Contracting Officer shall insert the clause at 5152.245-9001, Government Property for Installation Support Services (Cost-Reimbursement Contracts), in solicitations and contracts when a cost-reimbursement type contract is contemplated and the Government property will be provided without being replaced by the Government.

5145.303 Providing material.

(S-90) Existing Government material on hand or being used prior to conversion to contractor performance of commercial activities may be offered to contractors if it is determined to be in the best interest of the Government per FAR 45.303-1. If the material is to be provided without replacement by the Government, the solicitation must state that it will not be replaced. If it is determined that the Government will be responsible for replacement of any of the material, those items must be listed on a separate Technical Exhibit and the solicitation state that replacement will be by the Government. These items will be governed by the appropriate Government Property clause in the contract in accordance with FAR 52.245-2 for fixed-price and FAR 52.245-5 for cost-reimbursement type contracts.

PART 5152—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

5152.208-9001 Industrial preparedness planning.
5152.245-9000 Government property for installation support services (fixed-price contracts).
5152.245-9001 Government property for installation support services (cost-reimbursement contracts).

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

SOURCE: 54 FR 38683, Sept. 20, 1989, unless otherwise noted.

5152.208-9001 Industrial preparedness planning.

As prescribed at 5108-070(g)(4) insert the following clause in full text in contracts where the contractor is designated a Limited Fee Planned Producer.

INDUSTRIAL PREPAREDNESS PLANNING (XXX 1989) (DEV)

(a) The Government designates the contractor a Limited Fee Planned Producer (LFPP) for the item(s) listed in paragraph (e) of this clause. As an LFPP for the listed items, the contractor will be solicited for all acquisitions over $25,000 which are for the item(s), excluding those for which competition is restricted to the Restricted Specified Base pursuant to an approved Justification and Approval. The Government reserves the right to obtain the item(s) listed from sources other than the commercial marketplace, i.e. by assigning workload to a government-owned facility.

(b) The Contractor agrees to

(i) Update the Production Capacity Survey DD Form 1519 TEST for each item biennially;

(ii) Accomplish subcontractor planning as required in paragraph (f) of this clause;

(iii) Permit Government personnel access to records, manufacturing process data, plants and facilities in order to verify data on the Production Capacity Survey DD Form 1519 TEST.

(iv) Maintain the surge/mobilization capacity set forth in the Production Planning Schedules during active production of the item and for a period of (negotiated number) years after physical completion of this production contract.

(c) The Contractor is aware of the Government's dependence upon the Production Planning Schedules as a basis to take appropriate measures to ensure the adequacy of the United States Industrial Base. The Contractor also recognizes the Government's intention to convert Production Planning Schedule to contracts on a selective basis, as may be required to minimize materiel shortages during mobilization or to meet contingencies short of a declared national emergency. The Contractor agrees to accept contracts for the item(s) in accordance with the Production Planning Schedules. In the event mobilization or contingencies short of a declared national emergency occur after active production has ceased, and the allocated capacity is in use for the production of other item(s), the Contractor agrees to immediately discontinue production of such other item(s) if necessary to meet production schedules for the planned item(s). The Contractor further recognizes that it is the Government's intention to require that planned subcontractor support will be similarly converted to production subcontracts. Production delivery obligations under this clause are governed by Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*) (Defense Production Act) and as applicable are within the purview of the Defense Priorities and Allocation System.

(d) For the listed item(s), the Contractor certifies by signing this contract that the plant capacity required to support the mobilization quantity listed on the Production Capacity Survey DD Form 1519 TEST will be dedicated exclusively for the production of that item at mobilization. Furthermore, the Contractor certifies that this capacity is not shared by any other mobilization production requirements.

(e) This clause covers the item(s) listed below:

Item schedule No.	Item nomenclature (sample)
M11111	Fuze, Rocket MK987.
M22222	Machine Gun, MK35.

(f) Subcontractors, suppliers and vendors provide many of the components of military end items. The lack of critical components could be one of the major limitations of the United States' ability to support its Armed Forces warfighting capabilities. Therefore, the Government designated critical components and/or subassemblies in Block #27 of the attached Production Capacity Survey (DD Form 1519 TEST) are those for which the Contractor will conduct vertical planning if not produced in-house. Additional critical components and/or subassemblies may be identified by the Contractor in block #21 of the attached Production Capacity Survey (DD Form 1519 TEST). Foreign producers (other than Canada) will not be considered as a source of supply for critical components. Mandatory vertical (subcontractor) planning will be accomplished by the ASPPO and the Contractor for all critical components identified on the Production Capacity Survey, (DD Form 1519 TEST), by using a sub-tier Production Capacity Survey (DD Form 1519 TEST). The Contractor agrees to coordinate completion of the DD Form 1519 TEST and finalize prime and subcontractor planning with the Armed Services Production Planning Officer (ASPPO) having cognizance over the prime contractor's facility.

(g) After completion of active production of the item(s), the Government will annually, or as changes occur but not more than annually, furnish the Contractor updated technical data for the item. The Contractor agrees to review the technical data and to report to the Government within 60 days of receipt of the data, the impact of technical changes, if any, to the current Production Planning Schedules at no additional cost to the Government.

(h) Retention by the Contractor of the surge/mobilization capacity set forth in the Production Planning Schedules after completion of active production of the planned item(s) will not necessarily require that the Contractor maintain such capacity in idle status. Contractor utilization of capacity allocated for planned production for production of other non-planned items is consistent with the intent of any postproduction provisions of this contract, provided no degradation of surge/mobility capacity occurs as a result, and provided that the approval of the Contracting Officer with property cognizance is obtained for the use of any Government-owned property.

5152.245-9000 Government property for installation support services (fixed-price contracts).

As prescribed in 5145.302-3(91), insert the following:

GOVERNMENT PROPERTY FOR INSTALLATION SUPPORT SERVICES (FIXED-PRICE CONTRACTS) (OCT 1989) (DEV)

The Government property listed at Technical Exhibit ___ is provided "as is" to the contractor for use in the performance of this contract. This property may be used by the Contractor until the Contractor no longer desires to use it for contract performance or the Contracting Officer withdraws it from use under this contract in accordance with FAR 52.245-2(b). The Contractor will comply with instructions from the Contracting Officer relative to disposition of the property. No equitable adjustment or other claim will be payable to the Contractor based upon the condition or availability of the property, except as provided in FAR 52.245-19. The Contractor remains responsible for performance of the required services under this contract regardless of the length of time which the property provided hereunder remains operational. Property provided by or obtained by the Contractor under this contract remains Contractor property. Except as provided herein, the property listed at Technical Exhibit ___ will be governed by FAR 52.245-2, Government Property (Fixed-Price Contracts), and FAR 52.245-19, Government Property Furnished "as is".

(End of clause)

[54 FR 39539, Sept. 27, 1989]

5152.245-9001 Government property for installation support services (cost-reimbursement contracts).

As prescribed in 5145.302-3(S-91), insert the following clause:

GOVERNMENT PROPERTY FOR INSTALLATION SUPPORT SERVICES (COST-REIMBURSEMENT CONTRACTS) (OCT 1989) (DEV)

(a) *Government-furnished property.* The Government property listed at Technical Exhibit ___ is provided to the contractor for use in the performance of this contract for installation support services. This property will be used, maintained and administered by the Contractor until it is no longer required by the Contractor. Cessation of such use of the property, and subsequent turn-in, must be approved by the Contracting Officer. The Contracting Officer will provide the Contractor with appropriate disposition instructions. The Contractor will continue to perform following such disposition with Contractor-owned property. No equitable adjustment or claim will be payable resulting from turn-in or unsuitability for intended use of this property. No change to this contract is indicated by approval of turn-in of the property. No delay claim or performance delay will be allowed based on unsuitability of property or turn-in. The Contractor's proposal includes an estimate of the costs for providing its own property for the period following turn-in of Government property.

(b) *Changes in Government-furnished property.* The Contracting Officer may, by written notice, decrease the Government-furnished property or substitute other property for the property being used by the contractor. In the case of this withdrawal of property by the Contracting Officer, an equitable adjustment may be appropriate. Nevertheless, even in the case of such withdrawal, the Contractor is obligated to continue performance under this contract.

(c) *Title in Government Property.* (1) Title to the Property shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) of this clause shall pass to and vest in the Government upon completion of their installation in the property.

(2) Title to the property shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the property become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the property free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of any of the property.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government furnished premises, readily removable machinery, equipment and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(4) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Location of the property.* The Contractor may use the property only at the installation location(s) specified in the schedule. Written approval of the Contracting Officer is required prior to moving the property to any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the property involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the property.* The Contractor shall notify the Contracting Officer in writing whenever any item of the property is no longer needed or usable for performing under this contract. The contracting officer will then make a decision as to disposition if agreement is reached with the Contractor that the property is no longer usable or suitable for its intended use.

(f) *Property Control.* The Contractor shall maintain property control procedures and records, and a system of identification of the property, in accordance with the provisions of FAR subpart 45.5 in effect on the date of this contract.

(g) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall protect, preserve, maintain (including normal parts replacement), and repair the property in accordance with sound industrial practice.

(2) No later than 45 days after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show the adequacy of the proposed program. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under paragraphs (g) (1) and (5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under paragraphs (g)(1) through (g)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires

maintenance in excess of the normal maintenance program. The Contracting Officer shall then make a determination whether to repair the facilities or whether the Contractor should provide contractor property while continuing to perform.

(5) The Contractor shall keep records of all work done on the property and shall give the Government reasonable opportunity to inspect such records. When property is disposed of under this contract, the Contractor shall deliver the related records to the Government, or, if directed by the Contracting Officer, to third persons.

(6) The Contractor's obligation under this clause for each item of property shall continue until the item is removed, abandoned, or disposed of in accordance with Contracting Officer's instructions.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times have access to the premises where any of the property is located.

(i) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the property under this contract. Nevertheless, this provision applies only to injury arising out of use of property provided under this clause.

(j) *Representation and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any property. To the extent practical, the Contractor shall be allowed to inspect all the property to be furnished by the Government.

(2) If, however, the Contractor receives property in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer, and at Government expense, either return such item or otherwise dispose of it or effect repairs or modifications. If the determination is made by the Contracting Officer to require turn-in rather than repair of the property, then the Contractor will continue to perform the contract by using its own property, for which reimbursement will be made in accordance with applicable cost principles.

(k) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in paragraphs (k) (2) and (3) of this clause.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement:

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willfull misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (f) of this clause.

(3)(i) If the Contractor fails to act as provided by paragraph (k)(2)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract

shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (k)(6). However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (k) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(l) *Disposition of the facilities.* (1) The provisions of this paragraph shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor because the property is no longer suitable for intended use, no longer desired, or is withdrawn from use by the Government.

(2) The Contractor shall dispose of the property provided hereunder in accordance with guidance provided by the Contracting Officer.

(3) The Contracting Officer shall give disposition instructions within 60 days of agreement that the property should be returned to the Government.

(4) The Government may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated.

(5) When Government property is returned to the Government, upon termination of the contract relationship between Government and Contractor or when Government furnished property is replaced by Contractor property, the Contracting Officer may direct repair of Government property necessitated by the change from Government to Contractor property such as removal of fixtures. When Contractor property is removed from Government property at the end of contract performance, the Government property will be restored to its condition prior to installation of Contractor property in accordance with Contracting officer direction.

(End of clause)

[54 FR 39539, Sept. 27, 1989]

CHAPTER 52—DEPARTMENT OF THE NAVY ACQUISITION REGULATIONS

(Parts 5200 to 5299)

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PART 5215—CONTRACTING BY NEGOTIATION

Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

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5215.402 General.
5215.407 Solicitation provisions.

Subpart 5215.6—Source Selection

5215.605 Evaluation factors.
5215.608 Proposal evaluation.

Subpart 5215.8—Price Negotiation

5215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35.

SOURCE: 53 FR 16280, May 6, 1988, unless otherwise noted.

Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

5215.402 General.

(a) Competition is the cornerstone of Navy acquisition policy. As such, the preferred and predominant method of pricing in the Navy is through the use of competition, without the need for cost or pricing data and cost analysis. The Navy has found that not only does competition generate more favorable prices, but significant time and effort can be saved by relying on the forces of competition to establish prices, as opposed to the use of detailed cost analysis. This approach is not only consistent with the Competition in Contracting Act (CICA), but it affords the opportunity for significant efficiencies and reduction of procurement leadtime as a result of minimizing the requirement for cost or pricing data and associated audit reports. As competition is increasingly relied upon and the need for cost or pricing data is reduced, there may be a corresponding requirement for performing a cost realism evaluation for many competitive procurements to guard against unrealistically low prices which can lead to quality deficiencies, late deliveries, performance shortfalls, and cost overruns. In performing cost realism evaluation, only the minimum selected data to perform the cost realism evaluation is to be obtained, as opposed to full cost or pricing data which would be required when it is necessary to perform cost-based negotiations, such as in the case of sole source negotiations.

5215.407 Solicitation provisions.

(S-90) During acquisition planning, an assessment shall be made as to the likelihood that adequate price competition will exist. If it is anticipated that an award will be based on adequate price competition, the solicitation shall include the provision at 5252.215-9000. If the procurement schedule is critical, this provision with its Alternate I shall be used so that there will be a minimum delay in the event that adequate price competition does not materialize and it is necessary to obtain cost or pricing data. Contracting officers must be judicious in the use of the Alternate I provision, as it may cause offerors to incur certain costs in preparing standby cost or pricing data in anticipation that it may be subsequently requested.

Subpart 5215.6—Source Selection

5215.605 Evaluation factors.

(S-90)(1) When a cost realism evaluation will be performed, the source selection evaluation criteria shall include a notice that the proposed costs may be adjusted, for purposes of evaluation, based upon the results of the cost realism evaluation.

(2) Technical criteria may include quality standards that are based on either a minimally acceptable approach or a cost/benefit approach. When the quality desired is that necessary to meet minimum needs, proposals should be evaluated for acceptability and award made to the lowest priced, technically acceptable offer. When the quality desired is the highest affordable or that representing the best value, proposals should be evaluated on a cost/benefit basis that would permit an award based on paying appropriate premiums for measured increments of quality. When a cost/benefit approach is used, cost must carry

a weight of not less than 40% unless thoroughly justified.

(3) Cost realism evaluation. (i) Cost realism evaluation involves a summary level review of the cost portion (excluding profit/fee) of the offerors' proposals to determine if the overall costs proposed are realistic for the work to be performed. Cost realism evaluation differs from the detailed cost analysis usually undertaken in a noncompetitive procurement to determine the reasonableness of the various cost elements and profit/fee to arrive at a fair and reasonable price. Data submitted only for cost realism evaluation generally will not be certified.

(ii) The purpose of cost realism evaluation is to: (A) Verify the offeror's understanding of the requirements; (B) assess the degree to which the cost/price proposal reflects the approaches and/or risk assessments made in the technical proposal as well as the risk that the offeror will provide the supplies or services for the offered prices/costs; and (C) assess the degree to which the cost included in the cost/price proposal accurately represents the work effort included in the technical proposal.

(iii) Some examples of data and information that may be obtained to perform cost realism evaluation are: (A) Manloading (quantity and mix of labor hours); (B) engineering, labor and overhead rates; and (C) make or buy plans. A price analysis approach where there is adequate price history may also be a suitable and efficient means to evaluate cost realism. The amount of data required will be dependent upon the complexity of the procurement and the data already obtained by the contracting officer (e.g. information on recent Forward Pricing Rate Agreements (FPRAs)).

(iv) Cost realism evaluation generally will be performed as a part of the proposal evaluation process (see 5215.605) for all competitive solicitations where a cost reimbursement contract is contemplated. For competitive solicitations contemplating a fixed price, labor hour, or time and material type contract, a cost realism evaluation would be the exception and not the rule, although its use may be appropriate where the proposal evaluation process will encompass both a cost/price evaluation and a technical evaluation. Also, where the contracting officer suspects a "buy-in" (see FAR 3.501) or a misunderstanding of the requirements as a result of reviewing the initial offers, data and information should be obtained and a cost realism evaluation performed.

(v) When cost realism data are required, the contracting officer shall not request a formal field pricing report but rather, shall request a review of only those specific areas of information necessary to allow the contracting officer to perform a cost realism evaluation. For example, the contracting officer may only need to know the current or FPRA labor and/or overhead rates. In these instances, the request for information from DCAA may be oral or written.

5215.608 Proposal evaluation.

(a) When a cost realism evaluation will be performed in accordance with 5215.605(S-90), the resulting realistic cost estimate shall be used in the evaluation of cost.

Subpart 5215.8—Price Negotiation

5215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) *General.* As explained in 5215.402, cost or pricing data would not normally be obtained because the predominant portion of Navy procurements are awarded on the basis of adequate price competition.

(b)(1)(iii) Adequate price competition may also exist where price is a secondary factor in the evaluation of proposals, as long as price is a substantial factor. Price, as used herein, means cost plus any fee or profit applicable to the contract price. Thus, in competitive acquisitions where adequate price competition is contemplated, the contracting officer shall not require the submission of cost or pricing data whether certified or not, as defined in FAR 15.801, regardless of the type of contract.

(b)(3) Examples of contract awards for which prices may be based on adequate price competition and/or to have been established by adequate price competition are:

(i) Contracts for items for which there are a limited number of sources and the prices at which award will be made are within a reasonable amount of each other and compare favorably with independent Government estimates and with prior prices paid;

(ii) Any contract, including cost-type contracts, when cost is a significant evaluation factor; and

(iii) Contracts for which there are dual sources.

PART 5242—CONTRACT ADMINISTRATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Source: 51 FR 46671, Dec. 24, 1986, unless otherwise noted.

Subpart 5242.90—Refunds Requirements (Spares and Support Equipment)

5242.9000 Requests for refunds.

(a) *Policy.* (1) This subpart establishes uniform policy and procedures on requesting refunds for spare parts or items of support equipment. This policy is not intended to diminish the responsibility of Navy contracting personnel to properly price spare parts and items of support equipment. Further, it is not intended to serve as a mechanism for the recovery of excess profits.

(2) In accordance with the guidance set forth in paragraph (c) below, contracting activities shall request a refund whenever the contract price of any spare part or item of support equipment significantly exceeds the item's intrinsic value as defined in the clause at 5252.242-9000. Refunds shall be requested only for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be requested to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic quantity considerations) or changes in market conditions.

(b) *Examples.* The following are examples of circumstances which may establish a basis for a refund request or pricing adjustment:

(1) A technical or engineering analysis results in a determination that the intrinsic value is significantly lower than the historical price.

(2) The price paid for an item bought competitively in similar quantity and circumstances (e.g., urgency, delivery terms) is significantly less than the former sole source price.

(3) Prices paid to the manufacturer of an item indicate the amount previously charged by the prime contractor for the item significantly exceeded the intrinsic value of the prime contractor's efforts in providing the item.

(c) *Solicitation provisions.* The contracting officer shall insert the clause at 5252.242-9000 in solicitations, Basic Ordering Agreements, and contracts (as defined in FAR 2.101) which contain or may contain requirements for spare parts or items of support equipment, except those contracts awarded as a result of competitive small purchase procedures and orders under federal supply schedules. If added to existing contracts, the clause will not apply to items or components ordered by the Government prior to the date of incorporation of the clause into the contract. Heads of Contracting Activities (HCAs) are delegated, without power of redelegation, authority to establish monetary thresholds below which refunds will not be requested.

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 5252.2—Texts of Provisions and Clauses

5252.215-9000 Submission of cost or pricing data.
5252.242-9000 Refunds.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Source: 53 FR 16282, May 6, 1988, unless otherwise noted.

Subpart 5252.2—Texts of Provisions and Clauses

5252.215-9000 Submission of cost or pricing data.

As prescribed at 5215.407, insert the following provision:

SUBMISSION OF COST OR PRICING DATA (NOV 1987)

(a) It is expected that this contract will be awarded based upon a determination that there is adequate price competition; therefore, the offeror is not required to submit or certify cost or pricing data (SF 1411) with its proposal.

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist in accordance with FAR 15.804-3, the offeror shall provide certified cost or pricing data as requested by the contracting officer.

(End of clause)

ALTERNATE I (NOV 1987)

As prescribed at 5215.407, substitute the following paragraph (b):

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist, the offeror shall provide certified cost or pricing data as requested by the contracting officer. The offeror shall provide the requested data within [1] calendar days from the date of the contracting officer's request.

(End of clause)

5252.242-9000 Refunds.

As prescribed in 5242.9000 insert the following clause:

REFUNDS (SPARES AND SUPPORT EQUIPMENT) (DEC 1986)

(a) In the event that the price of a spare part or item of support equipment delivered under this contract significantly exceeds its intrinsic value, the contractor agrees to refund the difference. Refunds will only be made for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be made to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic purchase quantity considerations) or changes in market conditions.

(b) For purposes of this clause, the intrinsic value of an item is defined as follows:

(1) If the item is one which is sold, or is substantially similar or functionally equivalent to one that is sold in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(2) If there is no comparable item sold in substantial quantities to the general public, intrinsic value is defined as the price an individual would expect to pay for the item based upon an economic quantity as defined in FAR 52.207-4, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(c) At any time up to two years after delivery of a space part or item of support equipment, the contracting officer may notify the contractor that based on all information available at the time of the notice, the price of the part or item apparently exceeds its intrinsic value.

(d) If notified in accordance with paragraph (c) above, the contractor agrees to enter into good faith negotiations with the Government to determine if, and in what amount, the Government is entitled to a refund.

(e) If agreement pursuant to paragraph (d) of this clause, cannot be reached, and the Navy's return of the new or unused item to the contractor is practical, the Navy, subject to the contractor's agreement, may elect to return the item to the contractor. Upon return of the item to its original point of government acceptance, the contractor shall refund in full the price paid. If no agreement pursuant to paragraph (d) above is reached, and return of the item by the Navy is impractical, the contracting officer may, with the approval of the Head of the Contracting Activity, issue a contracting officer's final decision on the matter, subject to contractor appeal as provided in the Disputes clause.

(f) The contractor will make refunds, as required under this clause, in accordance with instructions from the contracting officer.

(g) The contractor shall not be liable for a refund if the contractor advised the contracting officer in a timely manner that the price it would propose for a spare part or item of support equipment exceeded its intrinsic value, and with such advice, specified the estimated proposed price, the estimated intrinsic value, and known alternative sources or items, if any, that can meet the requirement.

(h) This clause does not apply to any spare parts or items of support equipment whose price is determined through adequate price competition. This clause also does not apply to any spare part or item of support equipment with a unit price in excess of

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[1] To be completed by the contracting officer.

$100,000; or in excess of $25,000 if the contractor submitted, and certified the currency, accuracy and completeness of, cost or pricing data applicable to the item.

(End of clause)

CHAPTER 53—DEPARTMENT OF THE AIR FORCE FEDERAL ACQUISITION REGULATION SUPPLEMENT

(Parts 5300 to 5399)

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PART 5315—CONTRACTING BY NEGOTIATION

Subpart 5315.8—Price Negotiation

Sec.

5315.890 Formula pricing agreements (FPA).
5315.890-1 Description.
5315.890-2 Policy.
5315.890-3 Responsibilities.
5315.890-4 FPAs negotiated by other DOD agencies.

AUTHORITY: 5 U.S.C. 301 and FAR 1.301.

SOURCE: 52 FR 12414, Apr. 16, 1987, unless otherwise noted.

Subpart 5315.8—Price Negotiation

5315.890 Formula pricing agreements (FPA).

5315.890-1 Description.

Formula pricing agreements (FPAs), sometimes referred to as spare parts pricing agreements, set forth a pricing methodology and the specific rates and factors to be used when pricing items covered by the FPA. An FPA differs from a Forward Pricing Rate Agreement (FPRA) in that an FPA addresses a pricing methodology limited to a specific group of items and its use by different buying activities is optional; whereas FPRAs are generally limited to agreements on individual rates or factors (including Cost Estimating Relationships (CERs)), apply to many items, and are required to be used by all buying activities. Any pricing agreement made with a contractor shall be considered to be an FPA if it contains the following features:

(a) The agreement governs the pricing methodology of more than one future contract action and identifies the category(s) of purchases to be covered (for example, F-100 replenishment spares).

(b) The pricing agreement is expressed in terms which specify the direct cost inputs and the rates and/or factors to be applied to identified bases plus profit or fee.

5315.890-2 Policy.

FPAs should be established as necessary to ease negotiation of large numbers of contract actions and reduce administrative costs and lead time. However, FPAs shall only be negotiated with contractors having a significant volume of Government business and application normally shall be limited to acquisitions under $100,000. FPAs anticipating individual acquisitions over $100,000, shall be approved by the HCA and shall specifically establish the maximum dollar amount for an acquisition priced using the FPA. Proposals received above $100,000 must be submitted with an SF 1411 and a certificate of current cost or pricing data. All FPAs shall—

(a) Be in writing and signed by a contracting officer;

(b) Only be negotiated with contractors who are under Government in-plant contract administration cognizance and have a resident DCAA auditor. (This requirement may be waived with HCA approval);

(c) Not cover cost elements, such as those portions of direct labor and material costs which require discrete estimating and analysis;

(d) Identify all rates/factors that are a part of the FPA; however, the FPA may reference a FPRA(s) as long as the agreement prescribes the effect and treatment of changes in the FPRA;

(e) Provide specific terms and conditions covering expiration date, application, and data requirements (e.g. actual cost data) for systematic monitoring to assure the continuing validity of the agreement;

(f) Provide for cancellation at the option of either party;

(g) Require the contractor to submit to the contracting officer, and to the cognizant contract auditor, any significant change in cost or pricing data, estimating system, or accounting system and its impact on the FPA;

(h) Require the contractor to identify the FPA and the date of the latest certification of cost or pricing data supporting the FPA in each specific pricing proposal where the formula is used. The contractor shall also be required to identify those items that were not priced with the formula if they are commingled in a proposal that contains items priced with the formula;

(i) Provide that the FPA shall not be used if the contractor's purchasing, estimating, or accounting system are disapproved by the Government;

(j) Provide that the contracting officer, or designated representative, may perform detailed cost or price analysis on random samples of proposed items and/or those items that have units which are significantly higher than previous buys;

(k) Be supported by certified cost or pricing data in accordance with FAR 15.804, including the submission of a signed certificate of current cost or pricing data at the time agreement is reached on the FPA (and on an annual basis thereafter), and shall provide that contractual documents for items priced using the FPA, shall include the clause at FAR 52.215-22, "Price Reduction for Defective Cost or Pricing Data;"

(l) Provide that the price of individual contract actions priced under the FPA shall be adjusted if—

(1) It is found that the cost or pricing data supporting the FPA was not accurate, current, or complete;

(2) The contractor fails to comply with 5315.890-2(g); or

(3) The price was developed through incorrect application of the FPA;

(m) Provide that individual contract actions priced using the FPA shall contain a clause incorporating the FPA by reference; and

(n) Be based on a pricing methodology that ensures that unit prices are in proportion to the item's base cost (see FAR 15.812).

5315.890-3 Responsibilities.

(a) Major commands shall—

(1) Establish appropriate approval level for FPAs;

(2) Maintain a list of FPAs which identifies the company and group of items to be purchased;

(3) Conduct periodic reviews of FPAs and contract actions priced using FPAs; and

(4) Establish agreements with other DOD agency contract administration offices to provide field pricing support, negotiation support, and administrative support of Air Force negotiated FPAs.

(b) Air Force contract administration offices shall—

(1) Comply with the requirements of 5315.890-3(c) for those FPAs negotiated by the administrative contracting officer (ACO) for their own use;

(2) Make any FPA negotiated by the ACO available to any other buying activity for their use;

(3) Provide field pricing support to contracting officers in the evaluation of FPAs;

(4) Participate in the negotiation of FPAs;

(5) Notify the contracting officer, who negotiated the FPA, when conditions arise that may affect the FPA's validity; for example, changes to an FPRA, disapproval of a contractor's purchasing system, and so forth. When appropriate, recommend the FPA be cancelled and renegotiated;

(6) Periodically validate the contractor's compliance with the FPA; and

(7) Monitor rates and factors incorporated into each FPA.

(c) Contracting officers shall—

(1) Be responsible for the negotiation of the FPA and ensure that it complies with the requirements contained in 5315.890-2 (this responsibility may be delegated to the ACO);

(2) Obtain field pricing support, including contract audit and technical reviews, in the evaluation of FPAs;

(3) Prepare a price negotiation memorandum covering the pricing factors used in the FPA;

(4) Request CAO participation in negotiations;

(5) Semi-annually, through the ACO, request the DCAA resident auditor to determine if the contractor is complying with the FPA procedures;

(6) Annually, review the FPA to determine its validity by evaluating recorded cost data, and renegotiate the FPA if appropriate;

(7) Determine the effect of changed conditions that may affect an FPA's validity, cancel FPAs when appropriate, and notify all interested parties upon cancellation of the FPA;

(8) Not use an FPA that has been cancelled;

(9) At a minimum, conduct the following evaluation of each proposal generated under an FPA;

(i) Determine the applicability of the FPA to the items proposed.

(ii) Determine the reasonableness of direct cost inputs to the formula.

(iii) Determine the reasonableness of any non-covered cost proposed, such as nonrecurring costs.

(iv) Compare prices generated by the FPA to prior prices, government estimates, PR estimates, to ensure reasonableness. The existence of an FPA does not relieve the contracting officer from the responsibility of assuring that a price is fair and reasonable;

(10) Conduct detailed cost analysis on random samples of proposed items and/or those items that have unit prices which are significantly higher than previous buys;

(11) Ensure that individual contract actions priced using the FPA comply with the terms of the FPA; and

(12) Comply with 5315.905-1(b)(7)(C) when pricing an undefinitized contractual action using an FPA.

5315.890-4 FPAs negotiated by other DOD agencies.

FPAs negotiated by other agencies shall not be used by any Air Force activity unless they comply with the requirements in 5315.890-2.

PART 5316—TYPES OF CONTRACTS

AUTHORITY: 5 U.S.C. 301 and FAR 1.301.

SOURCE: 52 FR 6332, Mar. 3, 1987, unless otherwise noted.

Subpart 5316.2—Fixed-Price Contracts

5316.203-4 Contract clauses.

(d) *Adjustments based on cost indexes of labor or material.*

(3)(iii)(A) When using the abnormal escalation index method, on contracts in excess of $50,000,000, the clause shall provide that contract adjustments will include the compounding effect of actual indices for future periods. Since predicted economic trends have a compounding effect on the scheduled price, when calculating each economic price adjustment (EPA) for costs within a completed period, a further provisional adjustment shall be made to all future period costs. This provisional adjustment shall be calculated using the same percentage decrease (or increase) as was made in the adjustment for the completed period. Provisional adjustments for each period must be liquidated against the final adjustment for each period. For example, the following formula could be used in computing adjustments:

$$\text{Adjustment} = ((x - y)/y)\,[z] - s$$

where

x = actual index
y = projected index
z = sum of dollars subject to adjustment for all periods in which a final adjustment has not been made
s = sum of unliquidated provisional adjustments

(B) For those EPA clauses which include a dead band in which no adjustment is make, the upper end of the dead band becomes the projected index value during the times of increasing inflation, and the lower end of the dead band becomes the projected index value during times of decreasing inflation. For those EPA clauses which provide for price adjustments only if the difference between the projected index value exceeds a predetermined threshold (trigger bands), no adjustment will be made for the future periods unless the actual index value exceeds the predetermined threshold. However, when the actual index exceeds the projected index by the predetermined threshold, then an adjustment must be made to future periods.

(C) The above requirement is optional on multinational contracts where the impact of multiple country index recalculations are extremely complex.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 5350—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 5350.4—Residual Powers

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5350.403-90 Analysis for indemnification requests.

AUTHORITY: 5 U.S.C. 301 and FAR 1.301.

SOURCE: 51 FR 40978, Nov. 12, 1986, unless otherwise noted.

Subpart 5350.4—Residual Powers

5350.401 Standards for use.

5350.401-90 Indemnification under Public Law 85-804.

(a) Only the Secretary can grant indemnification under Pub. L. 85-804 and E.O. 10789 as amended.

(b) The Air Force will consider indemnifying contractors under this authority when the risk arises out of an instrumentality or activity which is unusually hazardous or nuclear in nature with risk of loss so potentially great that the contractor's financial and productive capabilities would be severely impaired or disrupted. The indemnified risk shall be precisely defined and directly related to the intrinsically hazardous or nuclear nature of the instrumentality or activity, or to the potentially catastrophic loss. Indemnification may extend beyond the period of contract performance only when the potential for devastating financial loss may result from normal use of the product. Indemnification shall not be provided for other forms of "product liability" beyond that resulting from the unusually hazardous or nuclear risks initially defined in the contract.

(c) In addition to (b) above, the Air Force will consider indemnifying contractors against unusually hazardous or nuclear risks with a potential for catastrophic loss for the purpose of furthering programmatic aims in the interest of the national defense. Providing indemnification to further programmatic aims will be considered for only exceptional compelling circumstances. Programmatic aims include, but are not limited to, assuring or obtaining competition, avoiding prohibitive insurance costs or where obtaining insurance is precluded by the release of classified information. Reducing or eliminating the insurance costs charged directly to a program does not in itself establish that insurance costs are prohibitive. Any request for indemnification for programmatic aims must clearly identify the programmatic purposes to be served and how indemnification will serve those purposes.

5350.403 Special procedures for unusually hazardous or nuclear risks.

5350.403-1 Indemnification requests.

Contractor requests for indemnification shall also include the following information:

(a) The risks for which indemnification is sought must be precisely defined and directly related to the intrinsically hazardous or nuclear nature of the instrumentality or activity or to the potentially catastrophic loss. Requests shall focus on only those risks for which insurance is not reasonably available at a reasonable cost or for which indemnification is necessary to further programmatic purposes.

(b) The risks must be related to a specific time-frame for which indemnification is required and must indicate whether the time-frame extends beyond contract performance.

(c) The purposes to be served by indemnifications must be clearly identified and the needs for indemnification substantiated so that the scope and nature of the request may be fully evaluated.

5350.403-2 Action on indemnification requests.

(a)(1) Prior to recommending indemnification, contracting officers shall ascertain that the contractor maintains financial protection in the form of liability insurance in amounts considered to be prudent in the ordinary course of business within the industry. In addition, the contractor shall submit evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period. A copy of the latest report on the contractor's insurance issued by the cognizant Government reviewing activity (i.e., AFPRO, DCAS, etc.) shall be submitted with the request for indemnification. The fact that insurance will be a direct cost to the program will not in itself be cause for a determination that financial protection is not reasonably available, although the cost of such insurance over and above the contractor's usual and customary cost for insurance will be considered.

(2) Notwithstanding paragraph (a)(1) of this section, there may be cases in which the Air Force will determine to indemnify the contractor only against losses in excess of an identified dollar amount.

(3) Whether certain risks are unusually hazardous or nuclear in nature requires a reasoned judgement based on the facts and circumstances of each case. Considerations which will assist in making that determination include—

(i) Understanding the nature of the risk for which indemnification is being requested and its relation to the product or activity;

(ii) Assuring there is a clear, precise definition of the unusually hazardous or nuclear risk;

(iii) Ascertaining the time-frame for indemnification;

(iv) Identifying the programmatic objectives for providing the indemnification requested such as assuring competition, avoiding prohibitive insurance costs, assuring contractor performance of essential services, or assuring protection of contractors from catastrophic loss where, for security reasons, adequate information cannot be disclosed to insuring activities to establish insurance coverage; and

(v) Determining that the indemnification provided serves the identified programmatic purposes.

(4) Contracting officers shall also assure that the contractor has an adequate, existing, and on-going industrial safety program prior to recommending indemnification. If indemnification is to extend into the period of use of the supplies or equipment, the contracting officer shall assure that the contractor has and maintains adequate system design, production engineering, and quality control procedures and systems. A copy of the current safety report issued by the cognizant Government reviewing activity (i.e., AFPRO, DCAS, etc.) shall be submitted with the request for indemnification.

(5) Requests for indemnification shall be considered on a case-by-case basis and must be supported by all of the data required by FAR 50.403 and this Supplement.

(6) Requests that are based on programmatic objectives shall be submitted over the signature of the Commander or not lower than the Vice Commander of the MAJCOM.

(7) Requests for indemnification authority shall be submitted through channels to HQ USAF/RDC.

(b) Upon receipt of authority to indemnify the agreed upon risk, and prior to inclusion of the appropriate indemnification clause in the contract, the contractor shall provide the PCO with a copy of the certificate of insurance, the policy or other binder evidencing that the insurance coverage required is current and in effect.

5350.403-90 Analysis for indemnification requests.

The following information and analysis shall be included to supplement the information required by FAR 50.403-2:

(a) A clear, precise definition of the risk in establishing the relationship of the system/equipment to the intrinsically hazardous or nuclear nature of the instrumentality or activity.

(b) For risks arising from instrumentalities or activities which are unusually hazardous or nuclear in nature, elaborate on the "unusually" hazardous versus hazardous nature. Many private sector activities are hazardous and a clear distinction must be shown.

(c) Dates or measurable activities (e.g., delivery of the last unit) when indemnification will start and stop.

(d) Define the programmatic objectives that cannot be otherwise accomplished and identify the programmatic consequences if indemnification is not granted.

(e) Discuss any deductibles and apportionment of loss provisions in applicable insurance coverages.

(f) When indemnification is to extend beyond acceptance and into the period of use, requests shall include a determination that the contractor has adequate system design, production engineering, and quality control procedures and systems.

(g) A determination by the Commander of the buying activity that indemnification is required to satisfy the programmatic objectives.

CHAPTER 57—AFRICAN DEVELOPMENT FOUNDATION

(Parts 5700 to 5799)

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SUBCHAPTER B—ACQUISITION PLANNING

PART 5706—COMPETITION REQUIREMENTS

Authority: 40 U.S.C. 474.

Source: 53 FR 5578, Feb. 25, 1988, unless otherwise noted.

Subpart 5706.3—Other Than Full and Open Competition

5706.302–70 Impairment of foreign aid programs.

(a) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief and rehabilitation.

(b) *Application.* This authority may be used for:

(1) An award under section 506(a)(5) of the African Development Foundation Act involving a personal service contractor serving abroad;

(2) An award of $100,000 or less for audit, evaluation or program support services to be provided abroad;

(3) An award for which the President of the Foundation makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the Foundation program.

(c) *Limitation.* (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances.

(2) The contract file must include an appropriate explanation and support justifying award without full and open competition, as provided in FAR 6.303, except that determinations made under paragraph (b)(3) of this section will not be subject to the requirement for contracting officer certification or to approvals in accord with FAR 6.304.

CHAPTER 61—GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS

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AUTHORITY: 41 U.S.C. 601-613; sec. 2713, Pub. L. 98-369, 98 Stat. 1175-1203.

SOURCE: 50 FR 1756, Jan. 11, 1985, unless otherwise noted.

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[50 FR 26764, June 28, 1985]

6101.0 Foreword.

The General Services Administration (GSA) Board of Contract Appeals was established in GSA pursuant to the Contract Disputes Act of 1978, 41 U.S.C. 601-613, as an independent tribunal to hear and decide contract disputes between contractors and GSA and other agencies of the United States, to conduct proceedings con cerning petitions for a contracting officer's written decision pursuant to 41 U.S.C. 605(c)(4), and to hear and decide appeals taken under the Disputes clause and in connection with contract-related claims. Additionally, the Board hears and decides protests filed under section 2713 of the Competition in Contracting Act of 1984, to be codified at 40 U.S.C. 759(h), involving procurements conducted under 40 U.S.C. 759. The authority of the Board is exercised in accordance with the rules in this part and the agency standards of conduct so that the integrity, impartiality, and independence of the Board are preserved.

6101.1 Scope of rules; definitions; construction; rulings and orders; panels; situs (Rule 1).

(a) *Scope.* The rules in this part govern proceedings in appeals relating to contracts filed with the Board on or after June 1, 1984, and all further proceedings in appeals then pending, except to the extent that in the opinion of the Board, their application in a particular appeal pending on the effective date would be infeasible or would work an injustice, in which event the former procedure applies. The rules in this part also govern proceedings in protests involving procurements conducted under 40 U.S.C. 759, filed with the Board on or after January 15, 1985, and proceedings concerning any petition filed with the Board for an order directing a contracting officer to issue a written decision on a claim.

(b) *Definitions* (1) *Appeal; appellant.* The term "appeal" means a submission to the Board of a contract dispute. For purposes of this part, a "protest" is not an appeal. The term "appellant" means the contractor filing an appeal with the Board.

(2) *Case.* The term "case" means an appeal, protest, or petition.

(3) *Filing.* Filing occurs upon receipt by the Office of the Clerk of the Board during the Board's working hours, except that in an appeal and in a petition, and not in any other kind of case:

(i) Filing may also be made with the Board by submitting a written notice of appeal to the contracting officer or to the head of the contracting agency;

(ii) The filing date of a document that has been mailed through the United States Postal Service is the date it is mailed; and

(iii) The filing date of a telegram is the date it is first transmitted by the telegraph company.

A postmark affixed by the United States Postal Service shall be presumed to establish the date of mailing; postmarks affixed by postage meters will not be accepted as evidence of the date of mailing. The date placed on a telegram by the telegraph company shall be presumed to establish the date of first transmission.

(4) *Interested party.* The term "interested party" means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

(5) *Intervening agency.* The term "intervening agency" means either the General Services Administration (GSA), or the agency for which GSA is conducting the procurement, when the agency seeking to intervene has submitted a motion to intervene in a protest in accordance with 6101.5(a)(3)(ii).

(6) *Intervenor of right.* The term "intervenor of right" means an interested party who files with the Board a notice of intervention in accordance with 6101.5(a)(3)(i) and who has not filed a protest concerning the same procurement with the United States General Accounting Office (GAO).

(7) *Permissive intervenor.* The term "permissive intervenor" means any entity that is an interested party and has proceeded with a protest of the same procurement at the GAO.

(8) *Party.* The term "party" means an appellant, petitioner, protester, respondent, intervenor of right, intervening agency, or permissive intervenor.

(9) *Petition; petitioner.* The term "petition" means a request filed with the Board under 41 U.S.C. 605(c)(4) that the Board direct a contracting officer to issue a written decision on a claim. The term "petitioner" means the contractor submitting the petition.

(10) *Protest; protester.* The term "protest" means a written objection by an interested party to a solicitation by a federal agency for bids or proposals for a proposed contract for the procurement or a written objection to a proposed award or the award of such a contract which is filed with the Board by the protester to initiate the protest proceeding. The term "protester" means an interested party who files a protest with the Board and who has not filed a protest with the GAO concerning the same procurement.

(11) *Respondent.* The term "respondent" means the Government agency whose decision, action, or inaction is the subject of an appeal, protest, or petition.

(c) *Construction.* The rules in this part shall be construed to secure the just, speedy, and inexpensive resolution of every case.

(d) *Rulings, orders, and directions.* The Board may make such rulings and issue such orders and directions as are necessary to secure the just, speedy, and inexpensive resolution of every case before the Board. Any ruling, order, or direction that the Board may make or issue pursuant to the rules in this part may be made on the motion or application of any party or on the initiative of the Board. The Board may also amend, alter, or vacate a ruling, order, or direction upon such terms as are just.

(e) *Panels.* Each case is assigned to a panel consisting of one or more administrative judges, one of whom is designated the panel chairman. In appeals not processed under 6101.13 or 6101.14, a panel shall consist of three or more administrative judges. The panel chairman has responsibility for processing the case and may, without referral to other panel members, temporarily suspend procurement authority in a protest, rule on nondispositive motions, and dismiss a case with prejudice upon the joint request or with the joint consent of the parties. Concurrence of a majority of the panel, if more than one judge is assigned, is required for the following actions:

(1) Adjudicating an appeal or protest on the merits or denying or refusing such an adjudication; and

(2) Issuing a ruling, order, or opinion deciding a motion filed under 6101.32 or 6101.33.

Any action that may be taken by a panel may be taken by the full Board pursuant to 6101.30.

(f) *Situs.* The Board's address is 18th and F Streets, N.W., Washington, DC 20405. The Board's telephone number is (202) 566-0116.

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 26766, June 28, 1985]

6101.2 Time: Enlargement; computation (Rule 2).

(a) *Time for performing required actions.* All time limitations prescribed in this part or in any order or direction given by the Board are maximums, and the action required should be accomplished in less time whenever possible.

(b) *Enlarging time.* Upon application of a party for good cause shown, the Board may enlarge any time prescribed by this part or by an order or direction of the Board. The exceptions are the time limits for filing appeals and protests (6101.5(b) (1) and (3)) and for convening the suspension hearing (6101.19(a)(2)). A written application is required, but in exigent circumstances an oral request may be made and followed by a written request. An enlargement of time may be granted even though the request was filed after the time for taking the required action expired, but the party requesting the enlargement must show good cause for its inability to make the request before that time expired.

(c) *Computing time.* Except as otherwise required by law, in computing a period of time prescribed by this part or by order of the Board, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted unless that day is a Saturday, a Sunday, or a legal holiday under federal law, in which event the period shall include the next business day. When the period of time prescribed or allowed is less than 7 days, any intervening Saturday, Sunday, or federal holiday shall not be counted. When the period of time prescribed or allowed is 7 days or more, intervening

Saturdays, Sundays, and federal holidays shall be counted except as otherwise provided. The exceptions are the 10-day time limits for filing protests (6101.5(b)(3) (ii) and (iii)) and submitting the protest file (6101.4(a)), the 15-day period for filing the protest answer (6101.7(c)(2)), the 25-day period for commencement of the hearing on the merits of the protests, and the 45-day period for deciding the protest. Time for filing any document or copy thereof with the Board expires when the Office of the Clerk of the Board closes on the last day on which such filing may be made.

6101.3 Service of papers (Rule 3).

(a) *On whom service must be made.* Except as this part provides or the Board may order, when a party sends a document to the Board it must at the same time send a copy to any other party in the manner provided in paragraph (b) of this rule. Subpoenas (6101.20) and posthearing and reply briefs (6101.25) are exceptions to this requirement. Any papers required to be served on a party shall be filed with the Board before service or within a reasonable time thereafter, but the Board may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the Board or for use in a proceeding.

(b) *When service must be made*—(1) *Appeals and petitions.* Except as this part provides or the Board may order, when a party to an appeal or petition files a document with the Board, it must serve a copy on the other party by mail or some other equally or more expeditious means of transmittal.

(2) *Protests.* When a protest is filed with the Board, the protester must serve a copy on the contracting officer whose decision or action is being protested by means reasonably calculated to effect delivery on the same day the protest is filed with the Board. When a party to a protest files with the Board any other document, it must serve a copy on every other party by means reasonably calculated to effect delivery within 1 day after the document is filed with the Board. Documents filed in camera pursuant to 6101.12(h) need not be served on the other parties.

(c) *Proof of service.* Except when service is not required, a party sending a document to the Board must indicate to the Board that a copy has also been sent to every other party. This may be done by certificate of service, by the notation of a carbon copy (cc:), or by any other means that can reasonably be expected to indicate to the Board that other parties have received a copy.

(d) *Failure to make service.* If a document sent to the Board by a party does not indicate that a copy has been served on every other party, the Board may return the document to the party that submitted it with such directions as it considers appropriate, or the Board may inquire whether a party has received a copy and note on the record the fact of inquiry and the response and may also direct the party that submitted the document to serve a copy on any other party. In the absence of proof of service a document may be treated by the Board as not properly filed.

6101.4 The appeal file; protest file (Rule 4).

(a) *Submission to the Board by the contracting officer.* Within 30 days from receipt of notice that an appeal has been filed, or in a protest, within 10 days after its filing excluding Saturdays, Sundays, and federal holidays, or within such time as the Board may allow, the contracting officer shall file with the Board appeal or protest file exhibits consisting of all documents and other tangible things relevant to the claim or protest and to the contracting officer's decision which has been appealed or protested, including:

(1) The contracting officer's decision, if any, from which the appeal or protest is taken;

(2) The contract, if any, including amendments, specifications, plans, drawings;

(3) All correspondence between or among the parties that is relevant to the appeal or protest, including the written claim or claims that are the

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subject of the appeal, and evidence of their certification, if any;

(4) Affidavits or statements of any witnesses on the matter in dispute or under protest and transcripts of any testimony taken before the filing of the notice of appeal or protest;

(5) All documents and other tangible things on which the contracting officer relied in making the decision or in taking the action protested, including a copy of the agency procurement request, the delegation of procurement authority, if any, and any correspondence relating thereto;

(6) The abstract of bids, if any;

(7) In a protest, a copy of the solicitation, protester's bid or proposal, and, if bid opening has occurred and no contract has been awarded, a copy of any bid relevant to the protest;

(8) In a protest of a negotiated procurement when no award has been made, a copy of any offer or proposal being considered for award and which is relevant to the protest (ordinarily, these documents will be submitted in camera pursuant to 6101.12(h)); and

(9) Any additional existing evidence or information deemed necessary to determine the merits of the appeal or protest.

The contracting officer shall serve a copy of the appeal or protest file on the appellant and on all other parties at the same time that the contracting officer files it with the Board, except that the contracting officer need not serve on the appellant or on any other party those documents furnished the Board in camera pursuant to 6101.12(h) or those documents previously furnished. However, the contracting officer must serve on the appellant or protester and on all other parties a list identifying the specific documents filed with the Board giving sufficient details necessary for their recognition. However, the list must not reveal the number and identity of the offerors whose proposals are filed in camera and should include an identifying statement, e.g., "proposal(s) being considered for award." This list must also be filed with the Board as an exhibit to the appeal or protest file.

(b) *Submission to the Board by appellant or any other party.* Within 30 days after filing of the respondent's appeal file exhibits, within 5 days after receipt of the respondent's protest file exhibits, or within such time as the Board may allow, the appellant or any other party shall file with the Board for inclusion in the appeal or protest file documents or other tangible things relevant to the appeal or protest that have not been submitted by the contracting officer. The appellant or any other party shall serve a copy of its additional exhibits upon the respondent and every other party at the same time as it files them with the Board.

(c) *Submissions on order of the Board.* The Board may, at any time during the pendency of the appeal or protest, require any party to file other documents and tangible things as additional exhibits.

(d) *Organization of the appeal and protest files.* Appeal and protest file exhibits may be originals or true, legible, and complete copies. They shall be arranged in chronological order within each submission, earliest documents first, bound on the left margin except where size or shape makes such binding impracticable, numbered, tabbed, and indexed. The numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. The index should include the date and a brief description of each exhibit and shall indicate which exhibits, if any, have been filed with the Board in camera or otherwise not served on every other party.

(e) *Lengthy or bulky documents.* The Board may waive the requirement to furnish other parties copies of bulky, lengthy, or outsized documents submitted to the Board as exhibits. The requirements of paragraph (d) of this section apply to such documents. In addition, the party submitting them shall make them reasonably available to all other parties for inspection if it has retained copies, and the Board will also make them available for inspection at its offices.

(f) *Use of appeal or protest file as evidence.* All exhibits in the appeal or protest file are part of the record upon which the Board will render its decision, except for those as to which an objection has been sustained. Unless otherwise ordered by the Board, objection to any exhibit may be made at any time before the first witness is sworn or, if the appeal or protest is submitted on the record pursuant to 6101.11, at any time prior to or concurrent with the first record submission. The Board may enlarge the time for such objections and will consider an objection made during a hearing if the ground for objection could not reasonably have been earlier known to the objecting party. If an objection is sustained, the Board will so note in the record.

(g) *When appeal or protest file not required.* The Board may postpone or dispense with the submission of any or all appeal or protest file exhibits.

6101.5 Filing cases; time limits for filing; docketing; notice of protest by contracting officer (Rule 5).

(a) *Filing cases.* An appeal is commenced by filing a notice of appeal with the Board, or by submitting a notice of appeal to the contracting officer or to the head of the contracting agency. A proceeding on a petition or a protest is commenced by filing it with the Board.

(1) *Notice of appeal; petition.* (i) A notice of appeal or petition shall be in writing and should be signed by the appellant or petitioner or by the appellant's or petitioner's attorney or authorized representative. If the appeal is from a contracting officer's decision, the notice of appeal should describe the decision in enough detail to enable the Board to differentiate that decision from any other; the contractor can satisfy this requirement by attaching a copy of the contracting officer's decision to the notice of appeal. If an appeal is taken from the failure of a contracting officer to issue a decision, or if a petition is filed with the Board, the notice of appeal or petition should describe in detail the claim that the contracting officer has failed to decide; the contractor can satisfy this requirement by attaching a copy of the written claim submission to the notice of appeal or petition.

(ii) A written notice in any form, including the one specified in the appendix to this part, is sufficient to initiate an appeal. The notice of appeal, or a petition, should include the following information: (A) The number and date of the contract; (B) the name of the agency and the component thereof against which the claim has been asserted; (C) the name of the contracting officer whose decision or failure to decide is appealed and the date of the decision, if any; (D) a brief account of the circumstances giving rise to the appeal; and (E) an estimate of the amount of money in controversy, if any, and if known.

(iii) The appellant or petitioner must send a copy of the notice of appeal or petition to the contracting officer whose decision is appealed or, if there has been no decision, to the contracting officer before whom the appellant's claim is pending.

(2) *Protest.* The only acceptable form for a protest is the pleading prescribed in 6101.7(b)(2), which must be filed with the Board, with a copy to the contracting officer as prescribed in 6101.3(b)(2). A protest may not be filed with the Board by an interested party who has proceeded with a protest of the same procurement at the GAO. Any other interested party or agency described in paragraph (a)(3) of this Rule 5 may participate as a party to a protest by filing a notice of intervention or a motion to intervene, as appropriate.

(3) *Intervention.* Intervention as a party in a protest is permitted, as follows:

(i) *Notice of intervention by intervenor of right.* An intervenor of right may intervene in a protest by filing a notice of intervention with the Board and serving copies upon all known parties and upon any potential intervening agency. It shall be the responsibility of the intervenor to contact the Board or the respondent to obtain any information it requires for filing its notice of intervention and for serving it upon other parties. The notice shall set forth the name, address, and telephone number of the person signing the notice, the nature of the party's direct economic interest that would be affected by the award of the contract or by failure to award the contract, the party's statement of position regarding the protest, and any other grounds for protest. All such grounds must be fully supported by specific allegations and, where practicable, affidavits or other pertinent documents, and must be timely asserted as provided in paragraph (b)(3) of this section. Receipt of such notice will be acknowledged by the Board, and it shall be the responsibility of the intervenor to contract the Board to ascertain the status of the protest, including the time and place of any hearings or other proceedings.

(ii) *Motion to intervene by intervening agency.* The Board may permit an intervening agency, upon motion timely filed pursuant to paragraph (b)(4) of this section, to intervene in a protest provided that the intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. The GSA is eligible to intervene on the question of whether a delegation of procurement authority is required or whether the procuring agency has failed to meet any condition of a delegation granted by specific request or by regulation. The agency for which GSA is conducting the procurement may be permitted to intervene in an appropriate case.

(iii) *Motion to intervene by permissive intervenor.* The Board may permit any entity defined in 6101.1(b)(7), upon motion timely filed pursuant to paragraph (b)(4) of this section, to intervene in a protest. Such entity is eligible to intervene on the issues already under protest and only if its participation will not unduly delay or prejudice the rights of the original parties. This limited participation may affect the applicant's rights of discovery and cross-examination and involvement in any hearing or settlement of the protest. A permissive intervenor will not be permitted to elect a hearing (6101.9).

(b) *Time limits for filing appeals, petitions, protests and for intervening*—(1) *Appeals.* (i) An appeal from a decision of a contracting officer shall be filed no later than 90 days after the date the appellant receives that decision.

(ii) An appeal may be filed with the Board should the contracting officer fail or refuse to issue a timely decision on a claim submitted in writing, properly certified if required.

(2) *Petitions.* A contractor may file with the Board a petition that the Board direct a contracting officer to issue a written decision on a claim.

(3) *Protests.* A protest will be considered by the Board if it includes the information required by 6101.7(b)(2) and is timely filed. In determining the time for filing protests under paragraphs (b)(3) (ii) and (iii) of this section, intervening Saturdays, Sundays, and federal holidays shall not be counted.

(i) A protest based upon alleged improprieties in any type of solicitation which are apparent before bid opening or the closing time for receipt of initial proposals shall be filed before bid opening or the closing time for receipt of initial proposals. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested no later than the next closing time for receipt of proposals following the incorporation.

(ii) A protest, other than one covered in paragraph (b)(3)(i) of this section, shall be filed no later than 10 days after the basis for the protest is known or should have been known, whichever is earlier.

(iii) If a protest has been filed initially with the agency, any subsequent protest to the Board filed within 10 days of formal notification of, or actual or constructive knowledge of, initial adverse agency action will be considered, provided that the initial protest to the agency was filed in accordance with the applicable time limits in paragraphs (b)(3) (i) and (ii) of this section.

(iv) A protest which is timely under this rule but is filed more that 10 calendar days after contract award will not be subject to the procedure in 6101.19 for suspension hearing and decision.

(4) *Intervention.* Any intervenor of right or intervening agency receiving notice of a protest as provided in paragraph (d) of this Rule 5 may, by inter-

vening within 4 days after receipt of notice, participate fully as party to a protest. When such a party intervenes, it may raise at the time it files its notice or motion any new issue concerning the protested procurement, provided that the new issue is timely raised under paragraph (b)(3) of this Rule 5 and further that the notice or motion complies fully with the pertinent requirements of paragraph (a)(3) of this Rule 5. An intervening agency must also file a motion to intervene within 4 days of receipt of a notice of intervention which raises a new issue or within 4 days of receipt of an amendment to the protest which raises a new issue.

(c) *Notice of docketing.* Notices of appeal, petitions, and protests will be docketed by the Office of the Clerk of the Board, and a written notice of docketing will be sent promptly to all parties.

(d) *Notice of protest by contracting officer.* Within 1 day after receipt of a copy of the protest, the contracting officer shall give oral or written notice of the protest: to all firms solicited who appear to be affected by the protest, if sealed bids or initial offers or proposals have not been opened; to all bidders or offerors, if no award has been made and bids have been opened or the date for receipt of initial proposals has passed; or, if award has been made, to the contractor and all bidders or offerors. This notice shall be provided to an officer, a managing agent, or the individual who has signed the bid or proposal. If the procuring agency is other than the GSA, notice shall also be given to the Director, Authorizations and Management Reviews Division (KMA) or the GSA official delegating procurement authority to the agency. If the GSA is procuring on behalf of another agency, notice shall also be given by the contracting officer to that agency. If only written notice is provided under this paragraph it must be provided by means reasonably calculated to effect delivery within 1 day after the copy of the protest is received by the contracting officer. If oral notice is given, it shall be confirmed in writing or by telegram or by teletyperwriter on the same date the oral notice is provided. The contracting officer will confirm by written notification to the Board within 5 days after receipt of the protest whether the requisite notice was provided and list all persons and agencies to whom such notice was given.

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 26766, June 28, 1985; 50 FR 29231, July 18, 1985]

6101.6 Appearances; notice of appearance (Rule 6).

(a) *Appearances before the Board*—(1) *Appellant; petitioner; protester; intervenor.* Any appellant, petitioner, protester, or intervenor may appear before the Board by an attorney at law licensed to practice in a state, commonwealth, or territory of the United States, in the District of Columbia, or in a foreign country. Alternatively, an individual appellant, petitioner, protester, or intervenor may appear in his own behalf; a corporation, trust, or association may appear by one of its officers or by any other authorized representative; and a partnership may appear by one of its members or by any other authorized representative.

(2) *Respondent; intervening agency.* The respondent and any intervening agency may appear before the Board by an attorney at law licensed to practice in a state, commonwealth, or territory of the United States, in the District of Columbia, or in a foreign country. Alternatively, the respondent may appear by the contracting officer or by the contracting officer's authorized representative.

(b) *Notice of appearance.* Unless a notice of appearance is filed by some other person, the person signing the notice of appeal, petition, protest, notice of intervention, or motion to intervene shall be deemed to have appeared on behalf of the appellant, petitioner, protester, or intervenor, and the head of the respondent agency's or the intervening agency's litigation office shall be deemed to have appeared on behalf of the respondent. A notice of appearance in the form specified in the appendix to this part is sufficient.

6101.7 Pleadings (Rule 7).

(a) *Pleadings required and permitted.* Except as the Board may otherwise order, the Board requires the submission of a complaint or a protest and an answer. In appropriate circumstances, the Board may order or permit a reply to an answer.

(b) *Complaint; protest*—(1) *Complaint.* No later than 30 days after the docketing of the appeal, the appellant shall file with the Board a complaint setting forth its claim or claims in simple, concise, and direct terms. The complaint should set forth the factual basis of the claim or claims, with appropriate reference to the contract provisions, and should state the amount in controversy, or an estimate thereof, if any and if known. No particular form is prescribed for a complaint, and the Board may designate the notice of appeal, a claim submission, or any other document as the complaint, either on its own initiative or on request of the appellant.

(2) *Protest.* A protest is commenced by filing it with the Board. The initial filing in a protest shall be in writing and signed by the protester or by the protester's attorney or authorized representative. It shall include:

(i) The name, address, and telephone number of the person signing the protest;

(ii) The number and date of the solicitation and the date for submission of sealed bids or initial proposals;

(iii) If a contract has been awarded, the number and date of the contract, and to whom awarded (if known);

(iv) The name and component of the agency and the name of the contracting officer whose decision the Board is being asked to review;

(v) A simple, concise, and direct statement of the grounds for protest, including citations to provisions of statute, regulations, or the delegation of procurement authority that the protester alleges were violated;

(vi) Proof of the timeliness of the protest; and

(vii) If a hearing is sought to determine whether procurement authority should be suspended (suspension hearing) or to determine the merits of the protest, a specific request for such a hearing or hearings.

A protest timely filed which does not include the information required by this section will not be considered unless it is timely amended as permitted by paragraph (f)(2)(i) of this section.

(c) *Answer*—(1) *Appeal answer.* No later than 30 days after the filing of the complaint or of the Board's designation of a complaint, the respondent shall file with the Board an answer setting forth simple, concise, and direct statements of its defenses to the claim or claims asserted in the complaint as well as any affirmative defenses it chooses to assert. In lieu of answering, the respondent may file a dispositive motion of one of the sorts enumerated in 6101.8(c) or a motion for a more definite statement; if such a motion if filed and is denied by the Board in whole or in part, the respondent shall file its answer no later than 30 days after the Board's ruling on the motion. If no answer or motion is timely filed, the Board may enter a general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by paragraph (f)(1) of this section. The Board will inform the parties when it enters a general denial on behalf of the respondent.

(2) *Protest answer.* No later than 15 days after the filing of the protest, the respondent shall file its answer with the Board setting forth its defenses to the protest, and its findings, actions, and recommendations in the matter. Intervening Saturdays, Sundays, or federal holidays shall not be counted in determining the time for filing this pleading. A dispositive motion or a motion for a more definite statement may not be filed in lieu of the protest answer.

(d) *Reply to an answer or response to a notice of intervention or motion to intervene.* If the Board orders or permits a reply to an answer or a response to a notice of intervention or motion to intervene, it shall be filed as directed by the Board.

(e) *Modifications to requirement for pleadings.* If the appellant has elected the small claims procedure provided by 6101.13 or the accelerated procedure provided by 6101.14, the submission of pleadings shall be governed by the applicable section.

(f) *Amendment of pleadings*—(1) *Appeals.* Each party to an appeal may amend its pleadings once without leave of the Board at any time before a responsive pleading is filed; if the pleading is one to which no responsive pleading it permitted, such amendment may be made at any time within 20 days after it is served, or, in small claims proceedings under 6101.13, within 10 days after it is served. The Board may permit the parties to amend pleadings further on conditions fair to both parties. If a response to the unamended pleading was required by this part or by an order of the Board, a response to the amended pleading shall be filed no later than 30 days after the filing of the amended pleading, or, in small claims proceedings, no later than 15 days after the filing of the amended pleading. 6101.12(e) concerns amendments to pleadings to conform to the evidence.

(2) *Protests.* (i) If a timely protest does not include all the information required by paragraph (b)(2) of this section, the Board may, in its discretion, so inform the protester and grant it leave to amend the protest to supply the missing information, except that a protest may be amended to include the information required in paragraph (b)(2)(v) of this section only if that information is filed in writing with the Board and served upon the contracting officer within the time limits of 6101.5(b)(3). Enlargement of time (6101.2(b)) will not be granted to comply with this requirement. As to any other information required in paragraph (b)(2) of this section, the Board will ordinarily grant such additional time for the filing of an amendment to the protest as is reasonable and fair in the circumstances. Except for purposes of determining the timeliness of the initial filing, the filing date of a protest which is amended by leave of the Board shall be the date of the filing of the amendment.

(ii) The notice of intervention or motion to intervene provided for in 6101.5(a)(3) may not be amended after the time limits set in 6101.5(b)(4) for filing such notice or motion.

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 26766, June 28, 1985]

6101.8 Motions (Rule 8).

(a) *How motions are made.* Motions may be oral or written. A written motion shall indicate the relief or order sought and, either in the text of the motion or in an accompanying legal memorandum, the grounds therefor, and, in addition, a motion for summary relief shall comply with the requirements of paragraph (g) of this section. 6101.25 prescribes the form and content of legal memoranda. Oral motions shall be made on the record and in the presence of the other party.

(b) *When motions may be made.* A motion filed in lieu of an answer pursuant to 6101.7(c)(1) shall be filed no later than the date on which the answer is required to be filed. Any other dispositive motion shall be made as soon as the grounds therefor are known, except that all dispositive motions in a protest shall be filed no later than 15 days after the filing of the protest. Any other motion shall be made promptly or as required by this part.

(c) *Dispositive motions.* The following dispositive motions may properly be made before the Board:

(1) Motions to dismiss for lack of jurisdiction or for failure to state a claim upon which relief can be granted or for failure to state a valid basis for protest;

(2) Motions to dismiss for failure to prosecute;

(3) Motions for summary relief (analogous to summary judgment) in appeals;

(4) Motions to dismiss a protest which is frivolous or untimely filed; and

(5) Any other motion to dismiss with prejudice.

(d) *Other motions.* Other motions may be made in good faith and in proper form.

(e) *Jurisdictional questions.* The Board may at any time consider the issue of its jurisdiction to decide a case. When all facts touching upon the Board's jurisdiction are not of record, decision of a jurisdictional question may be deferred pending hearing on the merits or the filing of record submissions.

(f) *Procedure.* In an appeal, a party may respond to a written motion other than a motion pursuant to 6101.31, 6101.32, or 6101.33 at any time within 20 days after the filing of the motion. Responses to motions pursuant to 6101.31, 6101.32, or 6101.33 may be made only as permitted or directed by the Board. In a protest, a party may respond to any written motion only as permitted or directed by the Board. The Board may permit hearing or oral argument on written motions and may require additional submissions from any of the parties. Procedure on oral motions made at hearing shall be determined as necessary in the course of their consideration.

(g) *Motions for summary relief in appeals.* With each motion for summary relief, there shall be served and filed a statement of the material facts as to which the moving party contends there is no genuine issue, and this statement shall include references to the supporting affidavits and documents, if any, and to the 6101.4 appeal file exhibits relied on to support such statement. Parties opposing such a motion shall serve and file, together with their opposing legal memoranda and opposing affidavits and documents, if any, a concise statement setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated. All material facts set forth in the statement required to be served and filed by the moving party are deemed to be admitted unless controverted by the statement required to be served by an opposing party.

(h) *Effect of pending motion.* Except as this part provide or the Board may order, a pending motion shall not excuse the parties from proceeding with the appeal or protest in accordance with this part and the orders and directions of the Board. In an appeal, if a motion is initially filed in lieu of an answer the answer will be due as prescribed by 6101.7(c).

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 29231, July 18, 1985]

6101.9 Election of hearing or record submission (Rule 9).

Each party shall inform the Board, in writing, whether it elects a hearing or submission of its case on the record pursuant to 6101.11. Such an election may be filed at any time unless a time for filing is prescribed by the Board or by 6101.13 (small claims procedure) or 6101.14 (accelerated procedure). A party electing to submit its case on the record pursuant to 6101.11 may also elect to appear at a hearing solely to cross-examine any witness presented by an opposing party, provided that the Board is informed of that party's intention within 10 days of its receipt of notice of the election of hearing by the opposing party. If a hearing is elected, the election should state where and when the electing party desires the hearing to be held and should explain the reasons for its choices if they are not apparent. A hearing will be held if one of the parties elects one. If a party's decision whether to elect a hearing is dependent upon the intentions of another party or parties, it shall consult with such other party or parties before filing its election. If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. The record submissions from a party that has elected to submit on the record shall be due as provided in 6101.11.

6101.10 Conferences, conference memorandum, prehearing order; sanctions, prehearing and presubmission briefs (Rule 10).

(a) *Conferences.* The Board may convene the parties in conference, either by telephone or in person, for any purpose. In protests, a conference will ordinarily be held within 6 days after the filing of the protest. The conference may be stenographically or electronically recorded by the Board. Matters to be considered and actions to be taken at a conference may include:

(1) Simplifying, clarifying, or severing the issues;

(2) Stipulations, admissions, agreements, and rulings to govern the admissibility of evidence, understanding

on matters already of record, or other similar means of avoiding unnecessary proof;

(3) Plans, schedules, and rulings to facilitate discovery;

(4) Limiting the number of witnesses and other means of avoiding cumulative evidence;

(5) Stipulations or agreements disposing of matters in dispute; or

(6) Any other matter that may aid in the disposition of the case.

(b) *Conference memorandum.* The Board may prepare a memorandum of the results of a conference, including any rulings or orders, and place such memorandum in the record of the case. A copy of the memorandum will be sent to each party, and each party shall have 5 days after receipt of the memorandum to object to the substance of it.

(c) *Prehearing order.* The Board may issue a prehearing or presubmission order to govern the proceedings in a case.

(d) *Sanctions.* When the Board has issued written directions or orders to any party, whether on its own initiative or following a prehearing or presubmission conference, and any party fails to comply, the Board may make such orders with regard to the failure as are just, including the following:

(1) Ordering that the facts pertaining to the matter in dispute shall be taken to be established for the purpose of the case in accordance with the contention of the party submitting documents or requests for admissions;

(2) Declaring a waiver of challenge of the accuracy of any statement or schedule of items and figures involved;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony; or

(5) Dismissing the case or any part thereof.

(e) *Prehearing or presubmission briefs.* A party may, by leave of the Board, file a prehearing or presubmission brief at any time before the hearing or upon or before the date on which first record submissions are due.

6101.11 Submission on the record without a hearing (Rule 11).

(a) *Submission on the record.* A party may elect to submit its case on the record without a hearing. A party submitting its case on the record may include in its written record submission or submissions:

(1) Any relevant documents or other tangible things it wishes the Board to admit into evidence;

(2) Affidavits, depositions, and other discovery materials that set forth relevant evidence; and

(3) A brief or memorandum of law.

The Board may require the submission of additional evidence or briefs and may order oral argument in a case submitted on the record.

(b) *Time for submission.* (1) If all parties have elected to submit their case on the record, the Board will issue an order prescribing the time for initial and, if appropriate, reply record submissions.

(2) If at least one party has elected a hearing and any other party has elected to submit its case on the record, any party submitting on the record shall make its initial submission no later than the commencement of the hearing or at an earlier date if the Board so orders, and a further submission in the form of a brief at the time for submission of posthearing briefs. The Board will accept a further record submission in the form of a reply brief if a party that attended the hearing is permitted to submit a reply brief; such a record submission will be due at the same time as the reply brief of the party or parties that attended the hearing. Submission and service of record submissions in the form of briefs are governed by 6101.25.

(c) *Objections to evidence.* Objections to evidence in a record submission may be made at any time within 10 days after the filing of the submission in an appeal or petition, or within 5 days in a protest. Replies to such objections, if any, may be made within 10 days after the filing of the objection. The Board may rule on such objections in its opinion deciding the merits of the case.

6101.12 Record of Board proceedings (Rule 12).

(a) *Composition of the record for decision.* The record upon which any decision of the Board will be rendered consists of:

(1) The notice of appeal, petition, or protest;

(2) Appeal or protest file exhibits other than those as to which an objection has been sustained;

(3) Hearing exhibits other than those as to which an objection has been sustained;

(4) Pleadings;

(5) Motions and responses thereto;

(6) Memoranda, orders, rulings, and directions to the parties issued by the Board;

(7) Documents and other tangible things admitted in evidence by the Board;

(8) Written transcripts or electronic recordings of proceedings;

(9) Stipulations and admissions by the parties;

(10) Depositions, or parts thereof received in evidence;

(11) Written interrogatories and responses received in evidence;

(12) Briefs and memoranda of law; and

(13) Anything else that the Board may designate part of the record.

All other papers and documents in a case are part of the administrative record of the proceedings. The administrative record shall include file and hearing exhibits offered but not received in evidence in a case; it may also include correspondence with and among the parties, and depositions, interrogatories, offers of proof contained in the transcript, and other documents that are not part of the record for decision.

(b) *Time for entry into the record.* Except as the Board may otherwise order, nothing other than posthearing briefs will be received into the record after a hearing is completed. In cases submitted on the record without a hearing, nothing will be received into the record after the time for filing of the last record submission. Briefs will be due as provided in 6101.25(b).

(c) *Closing of the record.* Except as the Board may otherwise order, no proof shall be received in evidence after a hearing is completed or, in cases submitted on the record without a hearing, after notice by the Board to the parties that the record is closed and that the case is ready for decision.

(d) *Notice that the case is ready for decision.* The Board will give written notice to the parties when the record is closed and the case is ready for decision.

(e) *Amendments to conform to the evidence.* When issues within the proper scope of a case, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing (see 6101.21(h)) or in record submissions, they shall be treated in all respects as if they had been raised in the pleadings. The Board may formally amend the pleadings to conform to the proof or may order that the record be deemed to contain pleadings so amended.

(f) *Enlargement of the record.* The Board may at any time require or permit enlargement of the record with additional evidence and briefs. It may reopen the record to receive additional evidence and oral argument at a hearing.

(g) *Inspection of the record of proceedings; release of any paper, document, or tangible thing prohibited.* Except for any part thereof that is subject to a protective order, the record of proceedings in a case shall be made available for inspection by any person at the office of the Board during the Board's normal working hours. Except as provided in 6101.23(c), no paper, document, or tangible thing which is part of the record of proceedings in a case may be released from the offices of the Board. Copies may be obtained by any person as provided in 6101.38.

(h) *Submissions in camera.* (1) A party may by motion request that the Board receive and hold in camera documents that the party contends are privileged or confidential, stating the grounds therefor. The documents that are the subject of the motion shall be attached to the motion. If the Board denies the motion, the documents will be returned to the moving party. If the Board grants the motion, the documents will be held in camera and will be part of the record of the case.

(2) The Board may at any time determine that documents in its files should be held in camera. If such a determination is made, all parties will be so notified.

(3) During a hearing or other proceedings the Board in its discretion may allow in camera testimony that a party contends would involve privileged or confidential matters. The party requesting in camera testimony must furnish advance notice of such a request to the Board and all opposing parties stating the grounds therefor.

6101.13 Small claims procedure (Rule 13).

(a) *General.* THE SMALL CLAIMS PROCEDURE IS AVAILABLE IN APPEALS SOLELY AT THE APPELLANT'S ELECTION. This procedure shortens the time periods for and allows the elimination of many of the procedural steps required by this part so that the Board may render its decision, where practicable, within 120 days after the Board's receipt of the election. Pleadings, discovery, and other prehearing activities may be restricted or eliminated. An appellant may elect the accelerated procedure prescribed by 6101.14, instead of the small claims procedure prescribed by this section, for any appeal eligible for the small claims procedure.

(b) *Election of the small claims procedure.* In any appeal in which the amount in controversy is $10,000 or less, the appellant may elect the small claims procedure.

(1) *When election must be made.* Except as the Board may otherwise order, such an election shall be made by written notice filed with the Board no later than 30 days after filing of the notice of docketing. A late election may be made only be leave of the Board.

(2) *Tolling of time.* The Board may toll the time for processing the appeal under the small claims procedure if it determines that the appellant has not proceeded in accordance with the schedule established pursuant to paragraph (c) of this Rule 13 and the appeal cannot otherwise be resolved within 120 days after receipt of appellant's election.

(c) *Proceedings in small claims.* The Board may establish an expedited schedule for the proceedings other than that prescribed in paragraphs (c)(1) through (6) of this section. The Board will ordinarily conduct a prehearing or presubmission conference pursuant to 6101.10 for this purpose. Except as the Board may otherwise order, the parties shall proceed in small claims appeals as follows:

(1) The respondent's appeal file exhibits shall be filed either as prescribed by 6101.4(a) or no later than 15 days after the receipt of the appellant's notice of election, whichever first occurs.

(2) If the Board permits the filing of a complaint, it shall be filed either as prescribed by 6101.7(d) or no later than 15 days after receipt of the appellant's notice of election, whichever first occurs.

(3) The appellant's appeal file exhibits shall be filed no later than 10 days after the filing of the respondent's appeal file exhibits.

(4) If the Board has permitted the filing of a complaint, the answer shall be filed no later than 10 days after the filing of the complaint.

(5) The election of each party prescribed by 6101.9 (Rule 9) shall be filed no later than 30 days after the receipt of the appellant's election of the small claims procedure.

(6) If the Board permits discovery, it shall be concluded no later than 10 days before the hearing date or, if both parties have elected to submit on the record pursuant to 6101.11, no later than 10 days before the date prescribed by the Board for first record submissions under 6101.11(b).

(d) *Decisions under the small claims procedure.* (1) Written decisions may be rendered by a single administrative judge and will be summary in form. If there is a hearing, the Board may, at the conclusion of the hearing, render a summary oral opinion deciding the appeal. Any such oral opinion will be reduced to writing, and copies will be given to both parties for record and payment purposes and to establish a date for commencement of the period for filing a motion pursuant to 6101.32 or 6101.33.

(2) In the absence of fraud, a decision under the small claims procedure is final and conclusive and may not be appealed or set aside. Such decisions shall have no value as precedent.

(e) *Motions pursuant to 6101.31, 6101.32, and 6101.33.* A motion pursuant to 6101.31, 6101.32, or 6101.33 may be filed in an appeal decided under the small claims procedure. Ordinarily, such a motion will be decided by the administrative judge who decided the appeal or by one other administrative judge of the Board.

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 26766, June 28, 1985]

6101.14 Accelerated procedure (Rule 14).

(a) *General.* THE ACCELERATED PROCEDURE IS AVAILABLE IN APPEALS SOLELY AT THE APPELLANT'S ELECTION. This procedure shortens the time periods for many of the procedural steps required by this part so that the Board may render its decision, where practicable, within 180 days after the Board's receipt of the election. An appellant may elect the accelerated procedure prescribed by this section, instead of the small claims procedure prescribed by 6101.13, for any appeal eligible for the small claims procedure. In cases proceeding under the accelerated procedure, the parties are encouraged to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) *Election of the accelerated procedure.* In any appeal in which the amount in controversy is $50,000 or less, the appellant may elect the accelerated procedure.

(1) *When election must be made.* Except as the Board may otherwise order, such an election shall be made by written notice filed with the Board no later than 30 days after the date the appellant receives the Board's notice of docketing. A late election may be made only by leave of the Board.

(2) *Rescission of election.* The Board may rescind the appellant's election of the accelerated procedure if it determines that the appellant has not proceeded in accordance with the schedule established pursuant to paragraph (c) of this Rule 14 and the appeal cannot otherwise be resolved within 180 days after receipt of the appellant's election.

(c) *Proceedings in accelerated appeals.* The Board may establish an expedited schedule for the proceedings other than that prescribed in paragraphs (c) (1) through (6) of this section. The Board will ordinarily conduct a prehearing or presubmission conference pursuant to 6101.10 for this purpose. Except as the Board may otherwise order, the parties shall proceed in accelerated appeals as follows:

(1) The respondent's appeal file exhibits shall be filed as prescribed by 6101.4(a).

(2) The complaint shall be filed as prescribed by 6101.7(b).

(3) The appellant's appeal file exhibits shall be filed no later than 20 days after the filing of the respondent's appeal file exhibits.

(4) The answer shall be filed no later than 20 days after the filing of the complaint.

(5) The election of each party prescribed by 6101.9 (Rule 9) shall be filed no later than 60 days after receipt of the appellant's election of the accelerated procedure.

(6) All discovery shall be concluded no later than 20 days before the hearing date or, if neither party has elected a hearing, no later than 20 days before the date prescribed by the Board for first record submissions under 6101.11(b).

(d) *Decisions under the accelerated procedure.* Decisions will be written and may be rendered by a single administrative judge with the concurrence of one other administrative judge. In the event the two administrative judges disagree, the Chief Administrative Judge will designate a third administrative judge to participate in the decision.

(e) *Motions pursuant to 6101.31, 6101.32, and 6101.33.* A motion pursuant to 6101.31, 6101.32, or 6101.33 may be filed in an appeal decided under the accelerated procedure.

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 26767, June 28, 1985]

6101.15 General provisions governing discovery (Rule 15).

(a) *Discovery methods.* The parties may obtain discovery by one or more of the following methods.

(1) Depositions upon oral examinations or written questions;

(2) Written interrogatories;

(3) Requests for production of documents or other tangible things; and

(4) Requests for admissions.

Unless otherwise ordered by the Board or provided by this part the frequency of use of these methods is not limited.

(b) *Scope of discovery.* Except as otherwise limited by order of the Board in accordance with this part, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, whether it relates to the claims or defense of a party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Discovery limits.* The Board may limit the frequency or extent of use of the discovery methods set forth in this Rule 15 if it determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(3) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

(d) *Conduct of discovery.* Unless the Board orders otherwise, the parties to an appeal may by written stipulation agree to the methods of procedures to be used in discovery, except that agreements affecting the time provided in 6101.17 (Rule 17) for responses to requests for discovery may be made only with the approval of the Board. In protests, the parties may engage in discovery only to the extent the Board enters an order which either incorporates an agreed plan and schedule acceptable to the Board or otherwise permits such discovery as the moving party can demonstrate is required for the expeditious, fair, and reasonable resolution of the protest and is consistent with the requirements of 6101.19(a)(3). Permissive intervenors will not be permitted full rights of discovery. When a petition has been filed, the parties may engage in discovery only to the extent ordered by the Board.

(e) *Discovery conference.* At any time after a case has been filed, and ordinarily within 6 days after the filing of a protest, upon application of a party or on its own initiative, the Board may hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery, if any; and determine such other matters as are necessary for the proper management of discovery. The Board may include in the conference such other matters as it deems appropriate in accordance with 6101.10 (Rule 10).

(f) *Protective orders; discovery objections.* (1) In connection with any discovery procedure, the Board, on motion or on its own initiative, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(iii) That discovery be conducted with no one present except persons designated by the Board;

(iv) That confidential information not be disclosed or that it be disclosed only in a designated way; and

(v) Such other matters as justice may require.

(2) If a party objects to a discovery request, it may file, or the Board may order it to file, a motion for a protective order with its objections and serve them on the opposing party or parties.

(g) *Failure to make or cooperate in discovery; sanctions.* (1) If a party fails (i) to appear before the officer who is to take his deposition, after being served with a proper notice, or (ii) to serve answers or objections to interrogatories submitted under 6101.17 (Rule 17), after proper service of interrogatories, or (iii) to serve a written response to a request for inspection, production, and copying of any documents and things under 6101.17 (Rule 17), the party seeking discovery may move for the Board to impose appropriate sanctions under paragraph (g)(3) of this Rule 15. The failure to act as described in this paragraph may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in paragraph (f) of this Rule 15.

(2) A party may apply to the Board for an order compelling discovery when another party refuses or obstructs discovery. If a motion to compel discovery is denied in whole or in part, the Board may make a protective order of the type listed in paragraph (f) of this Rule 15.

(3) When the Board has entered an order to provide or permit discovery, and there is a failure to comply with that order, the Board may make such orders with regard to the failure as are just, including the following:

(i) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order;

(ii) An order refusing to permit the disobedient party to support or to oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence; and

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed.

(h) *Subpoenas.* A party may request the issuance of a subpoena in aid of discovery under the provision of 6101.20 (Rule 20).

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 26767, June 28, 1985]

6101.16 Depositions (Rule 16).

(a) *When depositions may be taken.* After an appeal has been filed, the parties may mutually agree to, or, upon application of a party, the Board may order, the taking of testimony of any person by deposition upon oral examination or written questions before an officer authorized to administer oaths at the place of examination. In petitions and in protests, depositions may be taken only pursuant to Board order. Attendance of witnesses may be compelled by subpoena as provided in 6101.20, and the Board may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order may designate the manner of recording, preserving, and filing the deposition and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may, nevertheless, arrange to have a stenographic transcription made at its own expense.

(b) *Depositions: time; place; manner of taking.* The time, place, and manner of taking depositions, including the taking of depositions by telephone, shall be as agreed upon by the parties or, failing such agreement, as ordered by the Board. A deposition taken by telephone is taken at the place where the deponent is to answer questions propounded to him.

(c) *Use of depositions.* At a hearing on the merits or upon a motion or interlocutory proceeding, any part or all of a deposition, so far as admissible and as though the witness were then present and testifying, may be used against a party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by a party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designat-

ed to testify on behalf of, a public or private corporation, partnership or association, or governmental agency, which is a party, may be used by the adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose in its own behalf if the Board finds that:

(i) The witness is dead;

(ii) The attendance of the witness at the place of hearing cannot be reasonably obtained, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) The witness is unable to attend or testify because of illness, infirmity, age, or imprisonment;

(iv) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, exceptional circumstances exist which make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced.

(d) *Depositions pending appeal from a decision of the Board.* If an appeal has been taken from a decision of the Board, or before the taking of an appeal if the time therefor has not expired, the Board may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings before the Board. In such case, the party that desires to perpetuate testimony may make a motion before the Board for leave to take the depositions as if the action was pending before the Board. The motion shall show:

(1) The names and addresses of the persons to be examined and the substance of the testimony which the moving party expects to elicit from each; and

(2) The reasons for perpetuating the testimony of the persons named.

If the Board finds that the perpetuation of testimony is proper to avoid a failure or a delay of justice, it may order the depositions to be taken and may make orders of the character provided for in 6101.15 and in this section. Thereupon, the depositions may be taken and used as prescribed in this part for depositions taken in actions pending before the Board. Upon request and for good cause shown, an administrative judge may issue or obtain a subpoena, in accordance with 6101.20, for the purpose of perpetuating testimony by deposition during the pendency of an appeal from a Board decision.

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 29231, July 18, 1985]

6101.17 Interrogatories to parties; requests for admissions; requests for production of documents (Rule 17).

After a case has been filed, a party may serve on another party written interrogatories, requests for admissions, and requests for production of documents, except that in a petition and in a protest a party must first obtain a Board order permitting such discovery.

(a) *Written interrogatories.* Written interrogatories shall be answered separately in writing, signed under oath, and answered or objected to in an appeal or petition within 30 days after service or, in a protest, within 10 days after service. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory may involve an opinion or contention that relates to fact or the application of law to fact, but the Board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference has been held, or some other event has occurred.

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(c) *Written requests for admissions.* A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents, is to be answered in writing and signed or objected to, in an appeal or petition, within 30 days after service or, in a protest, within 10 days after service; otherwise, the matter therein may be deemed to be admitted.

(d) *Written requests for production of documents.* A written request for the production, inspection, and copying of any documents and things shall be answered or objected to, in an appeal or petition, within 30 days, or, in a protest, within 10 days after service.

(e) *Change in time for response.* Upon request of a party, or on its own initiative, the Board may prescribe a period of time other than that specified in this section.

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 29231, July 18, 1985]

6101.18 Hearing examiners (Rule 18).

(a) *Designation.* In appropriate cases the Chief Administrative Judge may designate a duly appointed hearing examiner of the Board to conduct proceedings in a case that has been assigned to a panel. Any such designation shall be by written order of the Chief Administrative Judge, who may specify the authority of the hearing examiner. A copy of such designation shall be sent to each party. In the absence of any specification in the order, and subject to paragraph (c) of this section, the authority of the hearing examiner shall be as set forth in paragraph (b) of this section. In no event shall the authority of the hearing examiner specified in the order of designation exceed that set forth in paragraph (b) of this section. A party may object in writing to the designation of a hearing examiner to conduct a hearing. Such objection must be filed with the Chief Administrative Judge within 5 days of the objecting party's receipt of notice of the designation. The Chief Administrative Judge will rule on any such objection within 5 days of its receipt.

(b) *Authority.* Subject to paragraph (c) of this section and 6101.1(e), a hearing examiner may be given the authority, with respect to any case to which the hearing examiner has been designated, to:

(1) Correspond with the parties on behalf of the Board with respect to any matter within the hearing examiner's authority;

(2) Perform any act that would be within the authority of a single administrative judge of the Board, including the following:

(i) Establish the date and place of hearing;

(ii) Establish a schedule for record submissions when at least one of the parties has elected not to attend a hearing;

(iii) Conduct a prehearing or presubmission conference and make rulings or issue directions in the course of such a conference;

(iv) Conduct a hearing and make rulings in the course of that hearing, except for a ruling on the suspension of procurement authority pending a decision on a protest; and

(v) Make other rulings that do not relate to dispositive matters during the pendency of the case; and

(3) Prepare recommended findings of fact and a recommended decision to be proposed to the assigned panel for adoption by the Board.

(c) *Limitations on authority.* Notwithstanding any other provision of this section, no hearing examiner of the Board may:

(1) Conduct any proceedings with respect to a case to which the hearing examiner has not been designated or in contravention of the order designating the hearing examiner;

(2) Conduct a hearing with respect to an appeal in which the amount in dispute is greater than $50,000;

(3) Take any action that has the effect of an adjudication of the case on the merits;

(4) Take any action that has the effect of striking, dismissing, or granting partial summary judgment with respect to any claim or defense of a party;

(5) Sign a subpoena; or

(6) Issue an oral decision at the conclusion of a hearing under the small claims procedure.

(d) *Amendment of rulings.* Upon motion of a party, the chairman of the panel to which an appeal has been assigned may amend, alter, or vacate any ruling made by the hearing examiner prescribed in paragraph (b) of this section. Such motions shall be filed within 5 days after the hearing is completed or, in cases submitted on the record, within 5 days after notice by the Board to the parties that the record is closed.

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 29231, July 18, 1985]

6101.19 Hearings: Scheduling; notice; unexcused absences; suspension decision (Rule 19).

(a) *Scheduling of hearings*—(1) *In general.* Hearings will be held at the time and place ordered by the Board and will be scheduled at the discretion of the Board. In scheduling hearings, the Board will consider the requirements of this part, the need for orderly management of the Board's caseload, and the stated desires of the parties as expressed in their elections filed pursuant to 6101.9 or otherwise. The time or place for hearing may be changed by the Board at any time.

(2) *Suspension hearing.* If an interested party in a protest filed either before or after contract award requests a hearing for the Board to determine whether to suspend procurement authority pending a decision on the merits of the protest, such hearing shall be held, whenever practicable, so that the determination whether to suspend will be made before bid opening or the closing date for receipt of initial proposals or, if bids have been opened or initial proposals received, before the anticipated award of the contract, and in any event no later than 10 days after the filing of the protest. A request for a suspension hearing will be denied if the protest is filed more than 10 calendar days after contract award.

(3) *Hearing protest on merits.* A hearing on the merits of a protest will be held no later than 25 days after the filing of the protest, excluding Saturdays, Sundays, and federal holidays, provided that a written request is filed by the protester, intervenor of right, or intervening agency no later than 2 days after such party's receipt of the protest answer.

(b) *Notice of hearing.* Notice of hearing will be by written order of the Board, except that it may be oral for a suspension hearing held under paragraph (a)(2) of this section. Notice of changes in the hearing schedule will also be by written order when practicable but may be oral in exigent circumstances. Except as the Board may otherwise order, each party that plans to attend the hearing in an appeal shall, within 10 days of receipt of (1) a written notice of hearing or (2) any notice of a change in hearing schedule stating that an acknowledgment is required, notify the Board in writing that it will attend the hearing. Acknowledgment of a notice of hearing in a protest may be written or oral and shall be given within such time as the notice prescribes.

(c) *Unexcused absence from hearing.* In the event of the unexcused absence of a party from a hearing, the hearing will proceed, and the absent party will be deemed to have elected to submit its case on the record pursuant to 6101.11.

(d) *Suspension decision.* The Board shall suspend the respondent's procurement authority, or a delegation thereof, pending a decision on the merits of the protest, unless the respondent establishes at hearing that: (1) absent suspension, contract award, if not already made, is likely to occur within 30 days; and (2) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board. The decision regarding suspension will be by order of the panel chairman and may be oral, to be reduced to writing as soon as practicable.

6101.20 Subpoenas (Rule 20).

(a) *Voluntary cooperation in lieu of subpoena.* Each party is expected to:

(1) Cooperate by making available witnesses and evidence under its control, when requested by another party, without issuance of a subpoena; and

(2) Secure voluntary attendance of third-party witnesses and production of evidence by third parties, when practicable, without issuance of a subpoena.

(b) *Subpoenas in appeals governed by the Contract Disputes Act of 1978 and in protests pursuant to the Competition in Contracting Act of 1984*—(1) *General.* Upon the written request of any party filed with the Office of the Clerk of the Board, or on his or her own initiative, an administrative judge to whom a case is assigned or who is otherwise designated by the Chief Administrative Judge, may issue a subpoena that commands the person to whom it is directed to:

(i) Attend and give testimony at a disposition in a city or county where that person resides or is employed or transacts business in person or at another location convenient to that person that is specifically determined by the Board;

(ii) Attend and give testimony at a hearing; and

(iii) Produce the books, papers, documents, and other tangible things designated in the subpoena.

(2) *Request for subpoena.* A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any documentary evidence sought. A request for a subpoena shall be filed at least:

(i) 15 days in an appeal or petition, or 5 days in a protest, before a scheduled deposition where the attendance of a witness at a deposition is sought; and

(ii) 30 days in an appeal or petition, or 10 days in a protest, before a scheduled hearing where the attendance of a witness at a hearing is sought.

The Board may, in its discretion, honor requests for subpoenas not made within these time limitations.

(3) *Form; issuance.* (i) Every subpoena shall be in the form specified in the appendix to this part. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his or her discretion, enter the name of the person to whom it is directed, but shall otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(ii) If the person subpoenaed is located in a foreign country, a letter rogatory or a subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 781-784.

(4) *Service.* (i) The party requesting a subpoena shall arrange for service. Service shall be made as soon as practicable after the subpoena has been issued.

(ii) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage allowed by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(5) *Proof of service.* The person serving the subpoena shall make proof of service thereof to the Board promptly and in any event before the date on which the person served must respond to the subpoena. Proof of service shall be made by completing and executing and submitting to the Board the "Return on Service" portion of a duplicate copy of the subpoena issued by an administrative judge. If service is made by a person other than a United States marshal or his deputy, that person shall make an affidavit as

proof by executing the "Return on Service" in the presence of a notary.

(6) *Motion to quash or to modify.* Upon written motion by the person subpoenaed or by a party, made within 10 days after service, but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed documentary evidence. Where circumstances require, the Board may act upon such a motion at any time after a copy has been served upon opposing parties.

(7) *Contumacy or refusal to obey a subpoena.* In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the Board shall apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board to give testimony, produce evidence or both. If a person fails to obey such an order, the court may punish that person for contempt of court.

(c) *Subpoenas in appeals not governed by the Contract Disputes Act of 1978.* (1) Upon written request of either party filed with the Office of the Clerk of the Board in appeals not governed by the provisions of the Contract Disputes Act of 1978, or on his or her own initiative, an administrative judge to whom a case is assigned or who is otherwise designated by the Chief Administrative Judge may obtain a subpoena from an appropriate U.S. district court through the Department of Justice, in accordance with the provisions of 5 U.S.C. 304, and Rule 45 of the Federal Rules of Civil Procedure.

(2) A request for a subpoena under this paragraph shall be filed at least 30 days in advance of a scheduled deposition or hearing. However, the Board may, in its discretion, honor requests for subpoenas not made within this time limitation.

(3) A request for a subpoena under this paragraph shall contain the same information required under paragraph (b)(2) of this section.

(4) In a case of refusal to obey a subpoena, the Board may apply appropriate sanctions or it may request the Department of Justice to seek enforcement of the subpoena.

6101.21 Hearing procedures (Rule 21).

(a) *Nature and conduct of hearings.* All hearings on the merits of cases shall be open to the public and conducted as far as is convenient in regular hearing rooms. All other acts or proceedings may be done or conducted by the Board either in its offices or at other places.

(b) *Continuances; change of location.* Whenever practicable, a hearing will be conducted in one continuous session or a series of consecutive sessions at single location. However, the Board may at any time continue the hearing to a future date and may arrange to conduct the hearing in more than one location. The Board may also continue a hearing to permit a party to conduct additional discovery on conditions established by the Board. In exercising its discretion to continue a hearing or to change its location, the Board will give due consideration to the same elements (set forth in 6101.19(a)) that it considers in scheduling hearings.

(c) *Availability of witnesses, documents, and other tangible things.* It is the responsibility of a party desiring to call any witness, or to use any document or other tangible thing as an exhibit in the course of a hearing, to ensure that whoever it wishes to call and whatever it wishes to use is available at hearing.

(d) *Enlargement of the record.* The Board may at any time during the conduct of a hearing require evidence or argument in addition to that put forth by the parties.

(e) *Examination of witnesses.* Witnesses before the Board will testify under oath or affirmation. A party or the Board may obtain an answer from any witness to any question that is not the subject of an objection that the Board sustains.

(f) *Refusal to be sworn.* If a person called as a witness refuses to be sworn or to affirm before testifying, the Board may direct that witness to do so, and in the event of continued refusal, the Board may permit the taking of testimony without oath or affirmation. Alternatively, the Board may refuse to permit the examination of that witness, in which event it may state for the record the inferences it draws from the witness's refusal to testify under oath or affirmation. Alternatively, the Board may issue a subpoena to compel that witness to testify under oath or affirmation, and in the event of the witness's continued refusal to swear or affirm, may seek enforcement of that subpoena pursuant to 6101.20.

(g) *Refusal to answer.* If a witness refuses to answer a question put to him in the course of his testimony, the Board may direct that witness to answer, and in the event of continued refusal, the Board may state for the record the inferences it draws from the refusal to answer. Alternatively, the Board may issue a subpoena to compel that witness to testify and, in the event of the witness's continued refusal to testify, may seek enforcement of that subpoena pursuant to 6101.20.

(h) *Issues not raised by pleadings.* If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may nevertheless be admitted by the Board if it is within the proper scope of the appeal. If such evidence is admitted, the Board may grant the objecting party a continuance to enable it to meet such evidence. If such evidence is admitted, the pleadings may be amended to conform to the evidence, as provided by 6101.12(e).

(i) *Delay by parties.* If the Board determines that the hearing is being unreasonably delayed by the failure of a party to produce evidence, or by the undue prolongation of the presentation of evidence, it may, by written order or by ruling from the bench, prescribe a time or times within which the presentation of evidence must be concluded, establish time limits on the direct or cross-examination of witnesses, and enforce such order or ruling by appropriate sanctions.

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 26768, June 28, 1985]

6101.22 Admissibility and weight of evidence (Rule 22).

(a) *Admissibility.* Any relevant evidence may be received. The Board may exclude relevant evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. Hearsay evidence is admissible unless the Board finds it unreliable or untrustworthy.

(b) *Federal Rules of Evidence.* As a general matter, and subject to the other provisions of this section, the Board will base its evidentiary rulings on the Federal Rules of Evidence.

(c) *Weight and credibility.* The Board will determine the weight to be given to evidence and the credibility to be accorded witnesses.

(d) *Submission of evidence in camera.* 6101.12(h) governs submissions in camera.

6101.23 Exhibits (Rule 23).

(a) *Marking of exhibits.* (1) Documents and other tangible things offered in evidence by a party will be marked for identification by the Board during the hearing or, if it is convenient for the Board and the parties, before the commencement of the hearing. They will be numbered consecutively as the exhibits of the party offering them.

(2) If a party elects to proceed on the record without a hearing pursuant to 6101.11, documentary evidence submitted by that party will be numbered consecutively by the Board as appeal or protest file exhibits.

(b) *Copies as exhibits.* Except upon objection sustained by the Board for good cause shown, copies of documents may be offered and received into evidence as exhibits, and such copies shall have the same force and effect as if they were the originals. If the Board so directs, a party offering a copy of a document as an exhibit shall have the original available at the hearing for examination by the Board and any other party. When the original of a document has been received into evidence as an exhibit, an accurate copy thereof may be substituted in evidence for the original by leave of the Board at any time.

(c) *Withdrawal of documentary exhibits and other papers.* With the permission of the Board, a party may remove an exhibit during the course of a proceeding. Otherwise, no withdrawal of any papers in the Board's file is permitted. Inspection of the file at the Board's offices is permitted by 6101.12(g).

(d) *Disposition of physical exhibits.* Any physical (as opposed to documentary) exhibit may be disposed of by the Board at any time more than 90 days after the expiration of the period for appeal from the decision of the Board, unless it has been earlier withdrawn by the party that submitted it.

6101.24 Transcripts of proceedings; corrections (Rule 24).

(a) *Transcripts.* Except as the Board may otherwise order, all hearings of appeals or petitions other than those under the small claims procedure prescribed by 6101.13, and all hearings in connection with protests will be stenographically or electronically recorded and transcribed. Any other hearing or conference will be recorded or transcribed only by order of the Board. Copies or transcriptions of stenographic or electronic recordings not ordered to be transcribed by the Board will be furnished to the parties or other persons only on conditions prescribed by the Board, which may include the payment of the costs of copying or transcription. Each party is responsible for obtaining its own copy of the transcript if one is prepared.

(b) *Corrections.* Corrections to an official transcript will be máde only when they involve errors affecting its substance. The Board may order such corrections on motion or on its own initiative, and only after notice to the parties giving them opportunity to object. Such corrections will ordinarily be made either by hand with pen and ink or by the appending of an errata sheet, but when no other method of correction is practicable the Board may require the reporter to provide substitute or additional pages.

6101.25 Briefs and memoranda of law (Rule 25).

(a) *Form and content of briefs and memoranda of law.* Briefs and memoranda of law shall be typewritten on standard size 8½ by 11-inch paper. Otherwise, no particular form or organization is prescribed. Posthearing briefs should, at a minimum succinctly set forth (1) the facts of the case with citations to those places in the record where supporting evidence can be found and (2) argument with citations to supporting legal authorities. Memoranda of law should generally adhere as closely as practicable to the form and content of briefs.

(b) *Submission and service of posthearing briefs.* Except as the Board may otherwise order, posthearing briefs shall be filed in an appeal 30 days after the Board's receipt of the transcript and in a protest 5 days after the Board's receipt of the transcript; reply briefs in an appeal, if filed, shall be filed 15 days after the parties' receipt of the initial posthearing briefs. The Board will notify the parties of the date of its receipt of the transcript. The Board will serve each party's brief on the other party or parties; this is an exception to the general requirement for service of papers of 6101.3. In the event one party has elected a hearing and any other party has elected to submit its case on the record pursuant to 6101.11, the filing of record submissions in the form of briefs shall be governed by this section.

6101.26 Consolidation; separate hearings; separate determination of liability (Rule 26).

(a) *Consolidation.* When cases involving common questions of law or fact are pending, the Board may:

(1) Order a joint hearing of any or all of the matters at issue in the cases;

(2) Order the cases consolidated; or

(3) Make such other orders concerning the proceedings therein as are intended to avoid unnecessary costs or delay.

(b) *Separate hearings.* The Board may order a separate hearing of any case or cases or of any claims or issues or number of claims or issues therein. The Board may enter appropriate orders or decisions with respect to any claims or issues that are heard separately.

(c) *Separate determinations of liability.* The Board may:

(1) Limit a hearing to those issues of law and fact relating to the right of a party to recover, reserving the determination of the amount of recovery, if any, for other proceedings; and

(2) In its decision of an appeal, irrespective of whether there is evidence in the record concerning the amount of recovery, and whether or not a stipulation or order has been made, reserve determination of the amount of recovery for other proceedings. In any instance in which the Board has reserved its determination of the amount of recovery for other proceedings, its decision on the question of the right to recover shall be final, subject to the provisions of 6101.31, 6101.32, and 6101.33.

6101.27 Stay or suspension of proceedings; dismissals in lieu of stay or suspension (Rule 27).

(a) *Stay of proceedings to obtain contracting officer's decision.* The Board may in its discretion stay proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer's alleged failure to render a timely decision.

(b) *Suspension for other cause.* The Board may suspend proceedings in a case for good cause. The order suspending proceedings will prescribe the duration of the suspension or the conditions on which it will expire. The order may also prescribe actions to be taken by the parties during the period of suspension or following its expiration.

(c) *Dismissal in lieu of stay or suspension.* When circumstances beyond the control of the Board prevent the continuation of proceedings in a case, the Board may, in lieu of issuing an order suspending proceedings, dismiss the case without prejudice to reinstatement. Such a dismissal may require reinstatement by a date certain or within a certain period of time after the occurrence of a specified event. If the order of dismissal does not otherwise provide, it will be subject to the provisions of 6101.28(a).

6101.28 Dismissals (Rule 28).

(a) *Voluntary dismissal.* (1) Upon motion of the appellant or by stipulation of the parties, a case may be dismissed by the Board. Unless otherwise stated in the appellant's motion or in the stipulation, the dismissal is without prejudice, except that such a dismissal operates as an adjudication upon the merits when requested by an appellant whose case based on or including the same claim has previously been dismissed by the Board.

(2) When a case has been dismissed without prejudice and has not been reinstated by the Board upon application of any party within three years of the date of dismissal, or within such shorter period as the Board may prescribe, the case shall be deemed to have been dismissed with prejudice as of the expiration of the applicable period.

(b) *Involuntary dismissal.* (1) Upon motion of the respondent or upon its own initiative, the Board may dismiss a case for failure to prosecute or comply with this part or any order of the Board.

(2) Unless the Board in its order for dismissal otherwise specifies, a dismissal under this paragraph (b), and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, shall be with prejudice and operate as an adjudication upon the merits.

6101.29 Decisions (Rule 29).

Except as provided in 6101.19(d) (protest suspension decision) and 6101.13 (small claims procedure), decisions of the Board will be made in writing upon the record as prescribed in 6101.12. Each of the parties will be furnished a copy of the decision certified by the Office of the Clerk of the Board, and the date of the receipt thereof by each party will be established in the record. A decision on the merits of a protest will be issued within 45 days after the filing of the protest, excluding Saturdays, Sundays, and federal holidays, unless the Board's Chairman (Chief Administrative Judge) determines that the specific and unique circumstances of the protest require a longer period. In that event, the Board shall issue a decision within the longer period determined by the Board's Chairman.

6101.30 Full Board consideration (Rule 30).

A request for full Board consideration is not favored. Ordinarily, full Board consideration will be ordered only when (a) it is necessary to secure or maintain uniformity of Board decisions, or (b) the matter to be referred is one of exceptional importance. The Chief Administrative Judge, on motion of any party, or at the request of any administrative judge of the Board, or on his or her own initiative, may order that a matter be considered by the full Board.

6101.31 Clerical mistakes (Rule 31).

Clerical mistakes in decisions, orders, or other parts of the record, and errors arising therein through oversight or inadvertence, may be corrected by the Board at any time on its own initiative or upon motion of a party on such terms, if any, as the Board may prescribe. During the pendency of an appeal from a Board decision, such mistakes may be so corrected before the certified list of record materials or the record itself is filed in the appellate tribunal, and thereafter while the appeal is pending may be so corrected only with leave of the appellate tribunal.

6101.32 Reconsideration; amendment of decisions; new hearings (Rule 32).

(a) *Grounds.* Reconsideration may be granted, a decision or order may be altered or amended, or a new hearing may be granted, for any of the reasons stated in 6101.33(a) and the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. Reconsideration, or a new hearing, may be granted on all or any of the issues. On granting a motion for a new hearing, the Board may open the decision if one has been issued, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions and direct the entry of a new decision.

(b) *Procedure.* Any motion under this section shall comply with the provisions of 6101.8 and shall set forth:

(1) The reason or reasons why the Board should consider the motion; and

(2) The relief sought and the grounds therefor.

If the Board concludes that the reasons asserted for its consideration of the motion are insufficient, it may deny the motion without considering the relief sought and the grounds asserted therefor. If the Board grants the motion, it will issue an appropriate order which may include directions to the parties for further proceedings.

(c) *Time for filing.* A motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed in an appeal or petition within 30 days and in a protest within 10 days after the date of receipt by the moving party of the decision or order. Not later than 30 days after issuance of a decision or order, the Board may, on its own initiative, order reconsideration or a new hearing or alter or amend a decision or order for any reason that would justify such action on motion of a party.

6101.33 Relief from decision or order (Rule 33).

(a) *Grounds.* The Board may relieve a party from the operation of a final decision or order for any of the following reasons:

(1) Newly discovered evidence which could not have been earlier discovered, even through due diligence;

(2) Justifiable or excusable mistake, inadvertence, surprise, or neglect;

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application;

(5) The decision is void, whether for lack of jurisdiction or otherwise; or

(6) Any other ground justifying relief from the operation of the decision or order.

(b) *Procedure.* Any motion under this section shall comply with the provisions of 6101.8 and 6101.32(b), and will be considered and ruled upon by the Board as provided in 6101.32(b).

(c) *Time for filing.* Any motion under this section shall be filed as soon as practicable after the discovery of the reasons therefor, but in any event no later than 120 days, or, in protests and in appeals under the small claims procedure of 6101.13, no later than 30 days after the date of the moving party's receipt of the decision or order from which relief is sought. In considering the timeliness of a motion filed under this section, the Board may consider when the grounds therefor should reasonably have been known to the moving party.

(d) *Effect of motion.* A motion under this section does not affect the finality of a decision or suspend its operation.

6101.34 Harmless error (Rule 34).

No error in the admission or exclusion of evidence, and no error or defect in any ruling, order, or decision of the Board, and no other error in anything done or omitted to be done by the Board will be a ground for granting a new hearing or for vacating, reconsidering, modifying, or otherwise disturbing a decision or order of the Board unless refusal to act upon such error will prejudice a party or work a substantial injustice. At every stage of the proceedings the Board will disregard any error or defect that does not affect the substantial rights of the parties.

6101.35 Award of protest costs; amount of costs allowed (Rule 35).

(a) *Award of protest costs.* If the Board determines that a challenged agency action violates a statute or regulation or the conditions of any delegation of procurement authority under 40 U.S.C. 759, the Board may, in accordance with 31 U.S.C. 1304, award an appropriate interested party the costs of:

(1) Filing and pursuing the protest, including reasonable attorney fees; and

(2) Bid and proposal preparation.

(b) *Amount of costs allowed.* Within 30 days after a decision sustaining a protest, an interested party may submit a motion, with supporting documentation and certification of accuracy, requesting the Board to issue an order requiring respondent to pay the costs described in paragraph (a) of this section. Respondent will have 20 days after its filing to respond to the motion, and after any hearing requested by the moving party or respondent, the Board will then issue its determination. The award will be paid pursuant to 6101.36.

[50 FR 1756, Jan. 11, 1985, as amended at 50 FR 26768, June 28, 1985; 50 FR 29231, July 18, 1985]

6101.36 Payment of Board awards (Rule 36).

(a) *Generally.* Payment of Board awards may be made in accordance with 31 U.S.C. 1304.

(b) *Conditions for payment.* Before a party may obtain payment of a Board award pursuant to 31 U.S.C. 1304, one of the following must occur:

(1) All parties must, by execution of a Certificate of Finality, waive their rights to relief under 6101.32 and 6101.33 and also their rights to appeal the decision of the Board to the U.S. Court of Appeals for the Federal Circuit; or

(2) The time for filing an appeal to the U.S. Court of Appeals for the Federal Circuit must expire.

(c) *Procedure for filing of certificates of finality.* Whenever the Board issues a decision or an order awarding a party any amount of money, it will attach to the copy of the decision sent to each party forms such as those illustrated in the appendix to this part. The conditions for payment prescribed in paragraph (b)(1) of this section are satisfied if each of the parties returns a completed and duly executed copy of this form to the Board. When the form is executed on behalf of an appellant or appropriate interested party by an attorney or other representative, proof of signatory authority shall also be furnished. Upon receipt of completed and duly executed Certificates of Finality from the parties, the Board will forward a copy of each such certificate (together with proof of signatory authority, if required) and a certified copy of its decision to the U.S. General Accounting Office to be certified for payment.

(d) *Procedure in absence of certificate of finality.* When one or more of the parties fails to submit a duly executed Certificate of Finality, but the conditions for payment have been satisfied as provided in paragraph (b)(2) of this section, any party to which an award has been made may file a written request that the Board forward its decision to the U.S. General Accounting Office for payment. Thereupon, the Board will forward a copy of that request and a certified copy of its decision to the U.S. General Accounting Office to be certified for payment.

(e) *Offer of award.* At any time after the filing of the case, the respondent may make an offer of award. If such offer is accepted by the appellant, the parties shall file with the Board a stipulation setting forth the terms of the offer and stating (1) that they will not seek reconsideration of, or relief from, the Board's decision and (2) that they will not appeal the decision. The Board will adopt the parties' stipulation by decision. The Board's decision under this paragraph is an adjudication of the case on the merits.

6101.37 Record on review of a Board decision (Rule 37).

(a) *Record on review.* When a party has filed a petition for review of a Board decision with the U.S. Court of Appeals for the Federal Circuit under 41 U.S.C. 607(g)(1) or under 40 U.S.C. 759(h)(6)(A), the record on review shall consist of the decision sought to be reviewed and the record before the Board as described in 6101.12. When the appellant has filed a notice of appeal of a decision in a pre-Contract Disputes Act case to the U.S. Claims Court under 41 U.S.C. 321-322, the record on appeal shall consist of the same materials.

(b) *Notice.* At the same time a party seeking review of a Board decision files a petition for review or a notice of appeal, that party shall file a copy of such petition with the Board.

(c) *Filing of certified list of record materials.* Promptly after service upon the Board of a copy of a petition for review of a Board decision, the Office of the Clerk of the Board shall file with the Clerk of the U.S. Court of Appeals for the Federal Circuit a certified list of all documents, transcripts of testimony, exhibits, and other materials constituting the record, or a list of such parts thereof as the parties may designate, adequately describing each. The Board will retain the record and transmit any part thereof to the court upon the court's order during the pendency of the appeal.

(d) *Transmission of record or stipulated record in pre-Contract Disputes Act cases.* Within 40 days after the filing of the notice of appeal, the Office of the Clerk of the Board shall transmit to the Clerk of the U.S. Claims Court the entire record or such parts thereof as the parties may designate by stipulation filed with the Board, except that the Office of the Clerk of the Board shall retain documents and physical exhibits of unusual weight or bulk other than those designated by the parties. In lieu of filing the entire record or such parts thereof as the parties may designate, the Office of the Clerk of the Board may file a certified list of all materials constituting the record, or of such parts thereof as the parties may designate. The parties may also stipulate that neither the record nor a certified list be filed with the court. If none of the record or only parts thereof are filed with the court, the Board shall retain the parts not filed. Any stipulation of the parties shall be filed with the Board in sufficient time for the Office of the Clerk of the Board to assemble and file with the Clerk of the U.S. Claims Court those parts of the record designated by the stipulation, or a certified list of those parts, within the period specified herein. Upon request of the court or a party, the record or any part thereof retained by the Board shall be transmitted to the court notwithstanding any prior stipulation.

6101.38 Office of the Clerk of the Board (Rule 38).

(a) *Open for the filing of papers.* The Office of the Clerk shall receive all papers submitted for filing, and shall be open for this purpose daily, at a time set by the Chief Administrative Judge, except Saturdays, Sundays, and federal holidays.

(b) *Decisions and orders.* The Office of the Clerk shall keep in such form and manner as the Board may prescribe a correct copy of each decision or order of the Board subject to review and any other order or decision which the Board may direct to be kept.

(c) *Docket.* The Office of the Clerk shall keep a docket on which shall be entered the title and nature of all cases brought before the Board, the names of the persons filing such cases, the names of the attorneys or other persons appearing for the parties, and a record of all proceedings.

(d) *Copies and certification of papers.* Upon the request of any person, copies of papers and documents in a case may be provided by the Office of the Clerk. When required, the Office of the Clerk will certify copies of papers and documents as a true record of the Board. Except as provided in 6101.23(c), the Office of the Clerk will not release original records in its possession to any person.

6101.39 Seal of the Board (Rule 39).

The Seal of the Board shall be a circular boss, the center portion of which shall depict the Seal of the General Services Administration. The outer margin of the seal shall bear the legend "Board of Contract Appeals". The Seal shall be the means of authentication of all records, notices, orders, dismissals, opinions, subpoenas, and certificates issued by the Board.

[50 FR 26768, June 28, 1985]

6101.40 Forms (Rule 40).

The forms contained in the Appendix to this part are sufficient under this part and are intended to indicate the simplicity and brevity of statement which this part contemplates. The subpoena form is a required form, and it may not be altered.

APPENDIX—FORM NOS. 1-5

Form Index

Form 1—Notice of Appeal, GSA form 2465
Form 2—Notice of Appearance
Form 3—Subpoena, GSA form 9534
Form 4—Government Certificate of Finality
Form 5—Appellant/Protester/Intervenor Certificate of Finality

Form 1

NOTICE OF APPEAL	DATE	OMB APPROVAL NO 3090-0221

TO Board of Contract Appeals
General Services Administration
Washington, DC 20405

I/We hereby appeal the final decision of ______________ *(Name of Contracting Officer)*, issued ______ *(Date)*.

in connection with a dispute under Contract No. ______. This contract was awarded ______ *(Date)*.

for ______________ *(Type of commodity, service, or construction)*

by ______________ *(Name of agency and organizational unit)*, ______________ *(City and State)*

1. DESCRIBE THE NATURE OF THE DISPUTE INVOLVED IN THE FINAL DECISION AND ANY OTHER CIRCUMSTANCES GIVING RISE TO THIS APPEAL:

2. DESCRIBE THE RELIEF WHICH YOU SEEK INCLUDING AN ESTIMATE OF THE AMOUNT OF MONEY IN CONTROVERSY, IF ANY, AND IF KNOWN:

APPELLANT		ATTORNEY FOR APPELLANT	
NAME		NAME	
TITLE		FIRM	
STREET		STREET	
CITY		CITY	
STATE ZIP CODE	TELEPHONE NUMBER ( )	STATE ZIP CODE	TELEPHONE NUMBER ( )
APPELLANT'S SIGNATURE		ATTORNEY'S SIGNATURE	

Board of Contract Appeals
General Services Administration
Washington DC 20405

Form 2

_______________________________ : GSBCA No. _________
_______________________________ :
_______________________________ :
Contract/Solicitation No. :
____

NOTICE OF APPEARANCE

To: ___________________
Administrative Judge
Board of Contract Appeals

Please enter my appearance as counsel for/representative of _______________________________ in the above-captioned case.

_______________________________ _______________________________
(Name) Date

____
(Title)

____
(Address)

____
(Telephone)

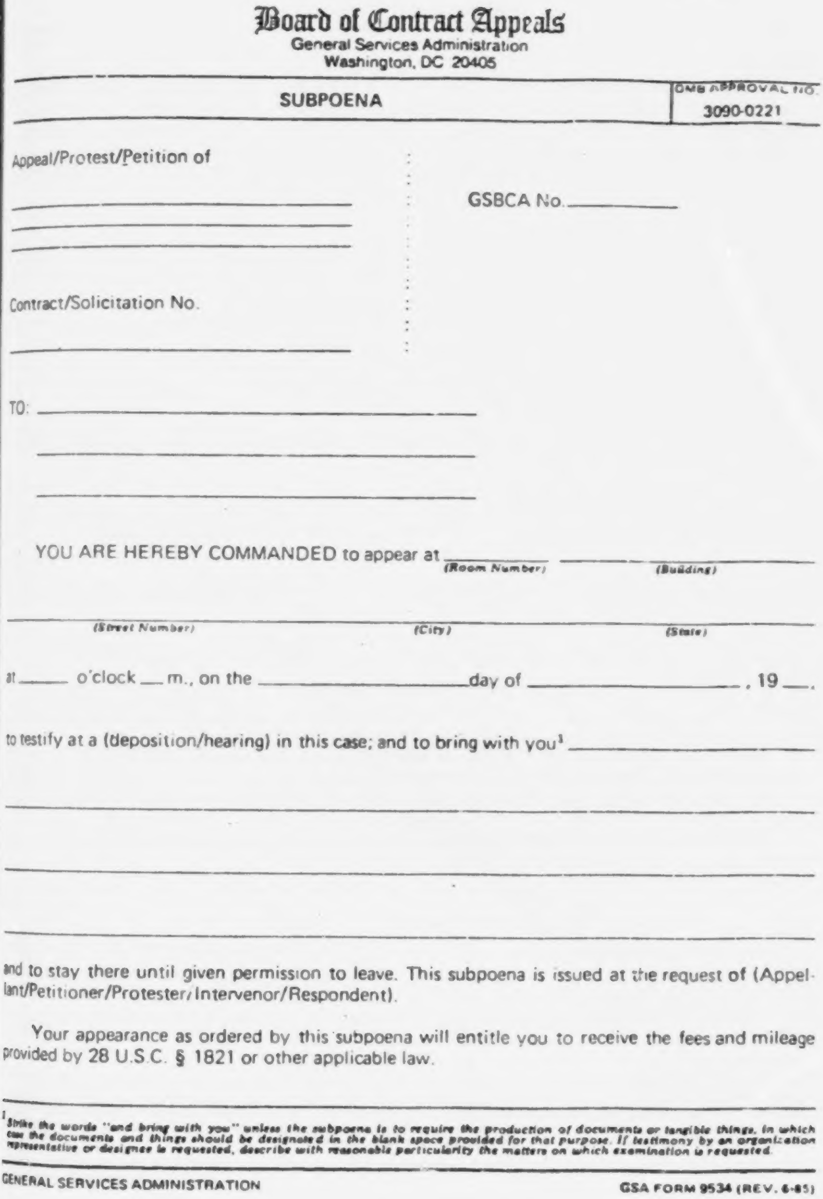
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appearance was mailed postage paid/delivered this __________ day of ____________________, 19___, to ____________________________.

____
(Signature)

Note: This format shall not be printed, reproduced, or stocked by the Central Office or regional offices and shall be used only as a guide for individual preparation.

Form 3



Board of Contract Appeals

General Services Administration
Washington, DC 20405

SUBPOENA	OMB APPROVAL NO. 3090-0221

Appeal/Protest/Petition of

____
____
____

GSBCA No. __________

Contract/Solicitation No.

____

TO: ____________________
____
____

YOU ARE HEREBY COMMANDED to appear at __________ (Room Number) __________ (Building)

__________ (Street Number) __________ (City) __________ (State)

at ____ o'clock ___ m., on the __________ day of __________, 19___,

to testify at a (deposition/hearing) in this case; and to bring with you[1] ____________________

____

____

____

and to stay there until given permission to leave. This subpoena is issued at the request of (Appellant/Petitioner/Protester/Intervenor/Respondent).

Your appearance as ordered by this subpoena will entitle you to receive the fees and mileage provided by 28 U.S.C. § 1821 or other applicable law.

---

[1] *Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.*

GENERAL SERVICES ADMINISTRATION GSA FORM 9534 (REV. 6-85)

Form 3

Upon written request to this Board by you or by a party to this case, which request should be made within 10 days after service but in any event no later than the time specified in the subpoena for attendance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books, papers, documents, or tangible things.

______________________ *(Administrative Judge)*	______________________ *(Date)*
______________________ *(Representative for Appellant/Petitioner/Protester/Intervenor)*	______________________ *(Representative for Respondent*
______________________ *(Address)*	______________________ *(Address)*
______________________	______________________
______________________	______________________
______________________ *(Telephone Number)*	______________________ *(Telephone Number)*
______________________ *(Date)*	______________________ *(Date)*

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to h ____ and tendering to h ____ the fees for one day's attendance and mileage allowed by law, on the ______________ day of ______________, 19____, at ______________________

Subscribed and sworn to before me, a ______________________ this ______________ day of ______________________, 19____.

____

NOTE: Affidavit not required if service is made by U.S. Marshall or Deputy. Service may also be made by any other person who is not a party and is not less than 18 years of age. Service shall be made by personally delivering a copy to the person named and tendering the fees for one day's attendance and the mileage allowed by law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

GSA FORM 9534 BACK (REV.

Board of Contract Appeals

General Services Administration
Washington DC 20405

Form 4

_______________	:	GSBCA No. ______
_______________	:	
_______________	:	
_______________	:	
Contract/Solicitation No. _______________	:	

GOVERNMENT CERTIFICATE OF FINALITY

A. Date claim(s) filed with the contracting officer:

B. Amount to be paid: $______________.

C. Agency address (regional office if other than central office):

D. Agency certification

______________________________ hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit or to the United States Claims Court (if applicable).

Government Agency

______________ By ______________________
Date Signature and Title

Note: This format shall not be printed, reproduced, or stocked by the Central Office or regional offices and shall be used only as a guide for individual preparation.

Board of Contract Appeals
General Services Administration
Washington DC 20405

Form 5

______________________ : GSBCA No. ________
______________________ :
______________________ :
______________________ :
Contract/Solicitation :
No. __________________ :

APPELLANT/PROTESTER/INTERVENOR CERTIFICATE OF FINALITY

A. Address to which check should be sent (if check is to be sent to counsel, enclose a power of attorney):

B. Appellant/Protester/Intervenor certification

____ hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at this Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit or to the United States Claims Court (if applicable); and

(3) it agrees to accept the amount awarded, plus any interest awarded, in accordance with the Board's decision in this case, in full and final satisfaction of its case.

Appellant/Protester/Intervenor

______________________ By ______________________
Date (Signature and Title)

Note: This format shall not be printed, reproduced, or stocked by the Central Office or regional offices and shall be used only as a guide for individual preparation.

[50 FR 26768, June 28, 1985]

CHAPTER 63—DEPARTMENT OF TRANSPORTATION BOARD OF CONTRACT APPEALS

(Parts 6300 and 6399)

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PART 6301—BOARD OF CONTRACT APPEALS

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6301.2 Qualifications of members.
6301.3 Jurisdiction and authority of the Board and its members.
6301.4 Ex Parte communications.
6301.5 Contract appeals procedures (general).
6301.6 Effective date.

AUTHORITY: Contract Disputes Act of 1978 (41 U.S.C. 600, *et seq.*).

SOURCE: 52 FR 48630, Dec. 23, 1987, unless otherwise noted.

6301.0 Foreword.

A Department of Transportation Board of Contract Appeals has been established pursuant to Pub. L. 95-563. The Secretary appoints the members of the Board and designates the Chair and Vice-Chair of the Board.

6301.1 Scope of part.

(a) *Scope.* This part prescribes the functions and procedures of the Department of Transportation Board of Contract Appeals and provides for the appointment of a Chair, a Vice-Chair, and Members of the Board, and sets forth their duties.

(b) *Definitions.* For the purposes of this part—

Administrative Judge means a member of the Board selected and appointed to serve pursuant to the Contract Disputes Act of 1978;

Appellant means the contractor who appeals;

Board means the Department of Transportation Board of Contract Appeals;

Contracting officer means the Government's contracting officer whose decision is appealed, or the successor contracting officer;

Parties means the appellant and the contracting officer, and

Secretary means the Secretary of Transportation.

6301.2 Qualifications of members.

Each member of the Board must be a qualified attorney who is admitted to practice before the highest court of a State or the District of Columbia. Members of the Board are selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5 of the United States Code, with the additional requirement that each member shall have had not fewer than five years experience in public contract law.

6301.3 Jurisdiction and authority of the Board and its members.

(a) The Board hears and decides:

(1) Appeals from decisions made by contracting officers relating to contracts of the Department of Transportation and its constituent administrations;

(2) Appeals from decisions of contracting officers relating to contracts of any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal;

(3) Matters within jurisdiction of the Board in accordance with the provisions of the Contract Disputes Act, 41 U.S.C. 600 *et seq.*; and

(4) Other matters as directed by the Secretary which are not inconsistent with statutory duties.

In each case, the Board shall make a final decision which is impartial, fair, and just to the parties and is supported by the record of the case and the law. The Administrative Judge assigned to hear an appeal has authority to act for the Board in all matters with respect to such appeal. Included in such authority is the authority to sign subpoenas and the power to authorize the Recorder of the Board to issue subpoenas pursuant to section 11 of the Contract Disputes Act of 1978. (41 U.S.C. 610)

(b) An Administrative Judge may not act for the Board or participate in a decision if that Judge has participated directly in any aspect of the award or administration of the contract involved.

(c) Except for appeals considered under the expedited small claims or accelerated procedures, appeals are assigned to a panel of three Administrative Judges of the Board. The decision of a majority of the panel shall constitute the decision of the Board.

6301.4 Ex Parte communications.

Ex parte communications, that is, written or oral communications with the Board by or for one party only without notice to the other, are not permitted. No member of the Board or of the Board's staff shall consider, nor shall any person directly or indirectly involved in an appeal submit to the Board or to the Board's staff, off-the-record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation between Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

6301.5 Contract appeals procedures (general).

(a) It is the intent of these rules to provide for the just and inexpensive determination of appeals without unnecessary delay. It is the objective of the Board's preliminary procedures to encourage full disclosure of relevant and material facts, and to discourage surprise. Each specified time limitation is a maximum, and should not be fully used if the action described can be accomplished in a shorter period. The Board may extend any time limitation for good cause and in accordance with legal precedent.

(b) Ordinarily, the appellant has the burden of proof.

(c) The rules of procedure at 6302 shall govern the procedures in all contract disputes appealed to the Board.

6301.6 Effective date.

This chapter shall apply to all appeals relating to contracts entered into on or after March 1, 1979, and upon the contractor's election of Contract Disputes Act procedures, to appeals relating to earlier contracts with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

PART 6302—RULES OF PROCEDURE

Sec.

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AUTHORITY: Contract Disputes Act of 1978 (41 U.S.C. 600, *et seq.*).

SOURCE: 52 FR 48631, Dec. 23, 1987, unless otherwise noted.

6302.1 How to appeal a contracting officer's decision (Rule 1).

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy of the notice shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this section citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to paragraph (b) or (c) of this section, the Board, at its option, may stay further proceedings pending issuance of a final decision by the contracting officer within the time fixed by the Board or order the appeal to proceed without the contracting officer's decision.

6302.2 Contents of notice of appeal (Rule 2).

A notice of appeal must indicate that an appeal is intended and identify the contract number, the administration, bureau, or office concerned with the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal shall be signed by the appellant, or by an officer of an appellant corporation or member of an appellant firm, or by an appellant's authorized representative or attorney.

6302.3 Docketing of appeals (Rule 3).

Following receipt by the Board of the original notice of appeal, the appellant and the contracting officer are promptly notified of its receipt and docketing by the Board, and the Board furnishes a copy of these rules to the appellant.

6302.4 Preparation, contents, organization, forwarding, and status of appeal file (Rule 4).

(a) *Duties of contracting officer.* Within 30 days after receipt of notice that an appeal has been docketed, the contracting officer shall assemble and transmit to the Board, with a copy to the appellant and the Government attorney, an appeal file consisting of all documents pertinent of the appeal, including:

(1) The contracting officer's decision and finding of fact from which the appeal is taken;

(2) The contract, including pertinent specifications, modifications, plans, and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant may supplement the file by transmitting to the Board any additional documents which it considers pertinent to the appeal and shall furnish two copies of such documents to the Government attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file. The contracting officer's final decision and the contract shall be conveniently placed in the file for ready reference.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, the other party shall be notified that the document or a copy is available for inspection at the offices of the Board or of the party filing the document.

(e) *Status documents in appeal file.* Documents contained in the appeal file are, without further action by the parties, a part of the record upon which the Board renders its decision, unless a party objects to the consideration of a particular document at or before the hearing or, if there is no hearing on the appeal, before closing the record. If objection to a document is made, the Board rules upon its admissibility into the record as evidence in accordance with Rules 17 and 23.

6302.5 Service of documents (Rule 5).

A copy of every written communication submitted to the Board shall be sent to every party to the dispute. Such communications shall be sent by delivering in person or by mailing, properly addressed with postage prepaid, to the opposing party or, where the party is represented by counsel, to its counsel. Each communication with the Board shall be accompanied by a statement, signed by the originating party, saying when, how, and to whom a copy was sent.

6302.6 Computation and extension of time limits (Rule 6).

(a) *Computation.* Except as otherwise provided by law, in computing any period of time prescribed by these rules, or by any order of the Board, the day of the event from which the designated period of time begins to run is not included, but the last day of the period is included unless it is a Saturday, Sunday, or a legal holiday, in which case the period runs to the end of the next business day.

(b) *Extensions.* All requests for extensions of time shall be submitted to the Board in writing and shall state good cause for the request.

6302.7 Motions (Rule 7).

(a) Motions are made by filing an original and two copies, together with any supporting papers, with the Board. Motions may also be made upon the record, in the presence of the other party, at a prehearing conference or a hearing. The Board considers any timely motion:

(1) For extensions of time (Rule 6) or to cure defaults;

(2) To require that a pleading be made more definite and certain, or for leave to amend a pleading (Rule 14);

(3) To dismiss for lack of jurisdiction (Rule 34); to dismiss for failure to prosecute (Rule 36); or to grant summary relief because a pleading does not raise a justifiable issue;

(4) For discovery, for interrogatories to a party, or for the taking of depositions (Rules 18 and 19);

(5) To reopen a hearing; or to reconsider a decision (Rule 33), or

(6) For any other appropriate order.

(b) The Board may, on its own motion, initiate any such action by notice to the parties. Unless a longer time is allowed by the Board, a party who receives a motion shall file any answering material within 20 days after the date of receipt. The Board makes an order on each motion that is appropriate and just to the parties, and upon conditions that will promote efficiency in disposing of the appeal.

(c) The Board may permit oral hearing or argument on motions, and may require the presentation of briefs.

6302.8 Appellant's election of procedures (Rule 8).

(a) In every appeal the appellant is required to elect one of the following procedures:

(1) A hearing under the Board's regular procedure (Rule 12);

(2) A hearing under the SMALL CLAIMS (EXPEDITED) procedure, if applicable (Rule 9);

(3) A hearing under the Board's ACCELERATED procedure, if applicable (Rule 10), or

(4) Submission on the written record or without a hearing (Rule 11). Also see Rule 11 with respect to the Government's right to waive a hearing.

(b) The SMALL CLAIMS (EXPEDITED) procedure is available where the amount in dispute is $10,000 or less (Rule 9). The ACCELERATED procedure is available where the amount in dispute is $50,000 or less (Rule 10). In deciding whether the SMALL CLAIMS (EXPEDITED) or ACCELERATED procedure is applicable to an appeal, any question regarding the amount in dispute shall be determined by the Board.

(c) The appellant's election of one of the above procedures shall be made in writing within 30 days after receipt of the appeal file unless such period is extended by the Board for good cause shown. The election may not be withdrawn except with permission of the Board and for good cause shown.

6302.9 The SMALL CLAIMS (EXPEDITED) procedure (Rule 9).

(a) The SMALL CLAIMS (EXPEDITED) procedure provides for simplified rules of procedure to facilitate the decision of an appeal, whenever possible, within 120 days from the date such procedure is elected.

(b) Promptly upon receipt of an appellant's election of the SMALL CLAIMS (EXPEDITED) procedure, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether the appellant desires a hearing and, if so, fix a time and place for the hearing, and

(4) Establish a schedule for the expedited resolution of the appeal.

(c) The subpoena power set forth in Rule 24 is available for use under the SMALL CLAIMS (EXPEDITED) procedure.

(d) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement of conducting the hearing at the scheduled time and place or, if no hearing is scheduled, of closing the record at an early time so as to permit a decision of the appeal within the 120-day time limit. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the 120-day time limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(e) Decisions in appeals considered under the SMALL CLAIMS (EXPEDITED) procedure are rendered by a single Administrative Judge. Written decisions of appeals considered under this procedure are short and contain only summary findings of fact and conclusions. If there has been a hearing on the appeal, the presiding Administrative Judge may, in his or her discretion, hear closing oral arguments of the parties and then render an oral decision on the appeal. Such decision will include summary findings of fact and conclusions. Whenever such an oral decision is rendered, the Board subsequently furnishes the parties with a written transcript of the oral decision for record and payment purposes and to commence the time period for the filing of a motion for reconsideration under Rule 33.

(f) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure shall have no value as precedent. Except in cases of fraud, decisions rendered under the SMALL CLAIMS (EXPEDITED) procedure may not be appealed by either party.

6302.10 The ACCELERATED procedure (Rule 10).

(a) The ACCELERATED procedure makes available a procedure where the appeal is resolved, whenever possible, within 180 days from the date such procedure is elected.

(b) Promptly upon receipt of appellant's election of the ACCELERATED procedure, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether a hearing is desired and, if so, fix a time and place for a hearing; and

(4) Establish a schedule for the accelerated resolution of the appeal.

(c) The subpoena power set forth in Rule 24 is available for use under the ACCELERATED procedure.

(d) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement of conducting the hearing at the scheduled time and place or, if no hearing is scheduled, the closing of the record at an early time so as to permit decision of the appeal with the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(e) Decisions in appeals considered under the ACCELERATED procedure are rendered by a single Administrative Judge, subject to the concurrence of the Vice-Chair or another assigned Administrative Judge. In the event of an even division on an appeal, the Chair participates in the decision of the appeal. Written decisions of appeals considered under this procedure are short and contain only summary findings of fact and conclusions. In cases where the amount in dispute is $10,000 or less and there has been a hearing under the ACCELERATED procedure the presiding Administrative Judge may, in his or her discretion, hear closing oral arguments of the parties and then render an oral decision on the appeal. Such decision will include summary findings of fact and conclusions. Whenever such an oral decision is rendered the Board subsequently furnishes the parties with a written transcript of the oral decision for record and payment purposes and to commence the time period for the filing of a motion for reconsideration under Rule 33.

(f) Decisions of the Board under the ACCELERATED procedure are published and have precedential value. Such decisions may be appealed by either party.

6302.11 Submission of appeal without a hearing (Rule 11).

Either party may elect to waive a hearing and to submit its case upon the record before the Board pursuant to Rule 17. Submission of a case without hearing does not relieve a party from the necessity of proving the facts supporting that party's allegation or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested) and by briefs in accordance with Rule 26.

6302.12 Regular procedure (Rule 12).

Under the regular procedure the parties are required to file pleadings with the Board (Rule 13). The regular procedure affords the parties an opportunity to make full use of prehearing and discovery procedures. Hearings under the regular procedure are conducted in the same manner as before courts of the United States in non-jury trials.

6302.13 Pleadings (Rule 13).

(a) *Complaint.* Under the regular procedure the appellant, within 30 days after receipt of the appeal file, shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. If the complaint is not filed within 30 days and, in the opinion of the Board, the issues before the Board are sufficiently defined, the appellant's claim and notice of appeal may be deemed to be its complaint, and the parties are so notified.

(b) *Answer.* Within 30 days from receipt of said complaint or a Rule 13(a) notice from the Board, the Government shall file with the Board an original and two copies of an answer, setting forth simple, concise, and direct statements of the Government's defense to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer and shall set forth any affirmative defenses as appropriate. Should the answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the parties are so notified.

6302.14 Amendments of pleadings or record (Rule 14).

(a) *Pleadings.* The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The application for such an order suspends the time for responsive pleading. The Board may, in its discretion and within the proper scope of the appeal, permit either party to amend its pleadings upon conditions just to both parties.

(b) *Record.* When an issue within the proper scope of the appeal, but not raised by the pleadings, is tried by consent of the parties or by permission of the Board, the issue is treated in all respects as if it had been raised. A motion to amend the pleadings to conform to the proof may be made but is not required. If evidence is objected to at a hearing on the ground that it is not within an issue raised by the pleadings, it may be admitted in evidence, but the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

6302.15 Prehearing briefs (Rule 15).

The Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected under the regular procedure. (Rule 8(a)(1)). If the Board does not ask for briefs, either party may, upon notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party.

6302.16 Prehearing conference (Rule 16).

(a) Whether the case is to be submitted on the written record or be heard under any hearing procedure, the Board, upon its own initiative or upon the application of any party, may call upon the parties to appear before the Board for a conference to consider:

(1) The simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses and the avoidance of similar cumulative evidence;

(4) The possibility of agreement disposing of all or any of the issues in dispute, and

(5) Such other matters as may aid in the disposition of the appeal. The result of the conference is set forth in an appropriate memorandum or order which becomes part of the record.

(b) In addition to the procedures provided in paragraph (a) of this section, the Board may direct any party whose claim is based in whole or in part on books of account or other records to furnish to the other party a statement showing the items and figures intended to be proved, with adequate reference to the books and records from which such figures were taken, and to make all such books and records available for examination by the other party. The Board may also direct any party to whom such a statement of items and figures has been submitted:

(1) To make an examination of such books or records or waive challenge of the accuracy of the statement submitted as reflecting the contents of such books and records; and

(2) To furnish the submitting party a schedule or schedules showing the results of such examination, with specific references to the books and records from which such figures were taken, where the examining party's results and figures are different from

those contained in the statement submitted.

6302.17 The record of the appeal (Rule 17).

(a) *Contents.* The record upon which the Board's decision is rendered consists of the appeal file, (Rule 4) and, if filed, the pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions and interrogatories and answers to interrogatories received in evidence, admissions, stipulations, transcripts of hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically made a part of the record. The record is available for inspection at the offices of the Board at all reasonable times.

(b) *Time of closing the record.* Except as the Board, in its discretion, may otherwise order, no proof is received in evidence after completion of the hearing of the appeal or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight of the evidence.* The weight to be attached to any evidence of record rests within the sound discretion of the Board. The Board may require any party to submit additional evidence on any matter relevant to the appeal.

6302.18 Discovery-depositions (Rule 18).

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, or provisions for protecting the secrecy of confidential information or documents.

(b) *Obtaining a deposition.* After an appeal has been docketed, the parties may voluntarily agree to take, or the Board may, upon application of either party and for good cause shown, order the taking of, testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for such order shall specify whether the purpose of the deposition is for discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions are as mutually agreed upon by the parties, or failing such agreement, as ordered by the Board.

(d) *Use of evidence.* No testimony taken by deposition is considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at the hearing. Testimony by deposition is not ordinarily received in evidence if the deponent is present and can testify at the hearing. However, any deposition may be used to contradict or impeach the testimony of a witness at the hearing. In cases submitted on the record, the Board, in its discretion, may receive depositions as evidence to supplement the record.

(e) *Expenses.* Each party bears its own expenses associated with discovery, unless, in the discretion of the Board, the expenses are apportioned otherwise.

(f) *Subpoenas.* Where appropriate, any party may request that a subpoena be issued under the provisions of Rule 24.

[52 FR 48631, Dec. 23, 1987, as amended at 53 FR 34106, Sept. 2, 1988]

6302.19 Interrogatories to parties, admission of facts, and inspection of documents (Rule 19).

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath, and returned within 30 days of receipt by the answering party. Within 30 days after service the answering party may object to any interrogatory and the Board determines the extent to which the interrogatory is permitted.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a written request for the admission of specified facts. If the request is to admit the genuineness of any document or the truth of any facts stated in a document, a copy of such document shall be served with the request. Within 30 days after receipt of the request, the party served shall answer each requested admission of facts or file objections thereto in writing. The factual propositions set out in the request are deemed admitted, if the answering party, willfully and without good cause, fails to respond to the request for admissions.

(c) *Production and inspection of documents.* After an appeal has been filed with the Board, a party may serve upon the other party a written request to produce and permit the inspection and copying or photographing of any designated documents, not privileged, regarding any matter which is relevant to the appeal.

(d) Any discovery under this rule shall be subject to the provisions of Rule 18(a) with respect to general policy and protective orders.

6302.20 Time and place of hearing (Rule 20).

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, the requirements for accelerated or expedited procedures and other pertinent factors. On request of any party and for good cause, the Board, may, in its discretion, change the date of hearing.

6302.21 Notice of hearing (Rule 21).

The parties are given at least 15 days notice of the time and place set for hearing. In scheduling hearings, the Board gives due regard to the desires of the parties and the requirement for the just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

6302.22 Unexcused absence of a party (Rule 22).

The unexcused absence of a party at the time and place set for hearing is not an occasion for delay. In the event of such absence, the presiding Administrative Judge may order the hearing to proceed or, in his or her discretion, may invoke the provisions of Rule 36.

6302.23 Nature of hearings (Rule 23).

(a) Hearings are as informal as may be reasonable and appropriate under the circumstances. At the hearing the parties may offer such relevant evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence, subject, however, to the sound discretion of the presiding Administrative Judge in supervising the extent and manner of presenting the evidence. In general, admissibility is governed by relevancy and materiality. Copies of documents, affidavits, or other evidence not ordinarily admissible under judicial rules or evidence, may be admitted in the discretion of the presiding Administrative Judge. The weight to be attached to evidence presented in any particular form is within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. In any case, the Board may require evidence in addition to that offered by the parties.

(b) Witnesses before the Board are examined orally under oath or affirmation, unless the facts are stipulated, or the Board otherwise orders.

6302.24 Subpoenas (Rule 24).

(a) *General.* Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and, if appropriate, to produce books, papers, documents, or tangible things, at a time and place therein specified. Subpoenas (including those calling for the production of documentary evidence) are signed by an Administrative Judge or by the Recorder of the Board but otherwise left blank when furnished to the party requesting the subpoena. The party to whom the subpoena is issued shall fill it in before service.

(b) *Subpoenas for attendance at hearing.* At the request of any party, subpoenas for the attendance of witnesses at a hearing are issued. A subpoena requiring the attendance of a witness at a hearing may be served at any place within 100 miles of the place of hearing specified in the subpoena; but the Board, upon proper application and for good cause shown by the requesting party, may authorize the service of a subpoena at any other place.

(c) *Subpoenas for production of documentary evidence.* A subpoena, in addition to requiring attendance to testify, may also command any person to whom it is directed to produce books, papers, documents, or tangible things designated therein. A subpoena calling for such production shall show the general relevance and reasonable scope of the evidence sought.

(d) *Subpoenas for taking depositions.* Subpoenas in aid of depositions (including those for the production of books, papers, documents, or tangible things) may be issued by the Recorder of the Board upon a showing that the parties have agreed to, or the Board has ordered, the taking of depositions under Rule 18. The service of subpoenas in aid of depositions shall be limited to the city or county wherein the witness resides or is employed or transacts business in person. If a subpoena is desired at other locations, a specific ruling of the Board is required.

(e) *Request to quash or modify.* Upon written request by a person under subpoena or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable costs of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(f) *Foreign country.* A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner, and be served as provided in 28 U.S.C. 1781-1784.

(g) *Service.* A subpoena may be served by a United States Marshal or a deputy, or by any person not a party who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by tendering the subpoena to that person with the fees for one day's attendance and the mileage allowed by law (28 U.S.C. 1821). When the subpoena is issued on behalf of the United States or an officer or agency of the United States, fees and mileage need not be tendered.

(h) *Fees.* The party at whose instance a subpoena is issued shall be responsible for the payment of witness fees and mileage, as well as the fees and mileage of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books, papers, documents, or tangible things produced.

(i) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof.

6302.25 Copies of papers (Rule 25).

When books, records, papers, or documents have been received in evidence, a true copy or any material or relevant part may be substituted during or at the conclusion of the hearing.

6302.26 Posthearing briefs (Rule 26).

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding

Administrative Judge at the conclusion of the hearing.

6302.27 Transcript of proceedings (Rule 27).

Testimony and argument at hearings are reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings are supplied to the parties and others at such rates as may be fixed by the Board.

6302.28 Withdrawal of exhibits (Rule 28).

After a decision has become final, the Board, in its discretion, upon request and after notice to the other party, may direct or permit the withdrawal of all or part of original exhibits. The substitution of true copies of exhibits or photographs of physical objects may be required by the Board as a condition of withdrawal.

6302.29 Representation of the parties (Rule 29).

(a) *The Appellant.* An individual appellant may appear before the Board in person, a corporation by an officer, a partnership or joint venture by a member, or any of these by an attorney-at-law admitted to practice before the highest court of the District of Columbia or any state, commonwealth, or territory of the United States. An attorney representing an appellant shall file a written notice of appearance with the Board.

(b) *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board.

6302.30 Alternative dispute resolution methods (Rule 30).

(a) To facilitate settlements in cases which might involve lengthy hearings (in excess of one week) of complex factual disputes and settled legal principles, the Board has adopted two methods of Alternative Dispute Resolution (ADR): Settlement Judges and Mini-Trials. These procedures are designed to supplement existing settlement techniques and not to replace them. Procedures regarding implementation of these ADR methods will be distributed to the parties, in appropriate cases, but may be obtained from the Board upon request.

(b) To employ ADR both parties must initially agree to use an ADR method. The parties must communicate that agreement in writing to the presiding judge as early as possible, preferably before commencement of voluntary discovery. The presiding judge shall promptly decide the appropriateness of the ADR method requested and so advise the parties. Where, after application of an ADR method, the parties are unable to resolve a dispute, the matter shall be restored to the docket of the presiding judge for hearing.

[53 FR 34106, Sept. 2, 1988]

6302.31 Settlement (Rule 31).

A dispute may be settled at any time before the Board renders its decision by the appellant filing a written notice withdrawing the appeal or by written stipulation of the parties settling the dispute. Proceedings may be suspended while the parties are considering settlement.

6302.32 Decisions (Rule 32).

Decisions of the Board are rendered in writing. Copies are forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions are open for public inspection at the offices of the Board in Washington, DC. Decisions of the Board are made solely upon the record, as described in Rule 17.

6302.33 Motion for reconsideration (Rule 33).

A motion for reconsideration shall set forth specifically the grounds relied upon to sustain the motion and shall be *mailed or otherwise furnished* within 30 days from the date of receipt of a copy of the Board's decision.

6302.34 Dismissal for lack of jurisdiction (Rule 34).

Any motion addressed to the jurisdiction of the Board shall be promptly filed. A hearing on the motion may be afforded on application of either party. The Board has the right at any time on its own motion to raise the issue of its jurisdiction to proceed with a particular case and do so by an appropriate order, affording the parties an opportunity to be heard.

6302.35 Dismissal without prejudice (Rule 35).

When the Board is unable to proceed with disposition of an appeal for reasons not within its control, such appeal is placed in a suspense status. In any case where such suspension has continued, or it appears that it may continue for a period in excess of one year, the Board may dismiss the appeal without prejudice to its restoration to the Board's docket when the cause of suspension has been eliminated. Unless either party or the Board acts to reinstate any appeal so dismissed within three years from the date of dismissal, the dismissal is automatically converted to a dismissal with prejudice without further action by the parties or the Board.

6302.36 Dismissal for failure to prosecute or defend (Rule 36).

Whenever a record discloses the failure of any party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates a party's intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be dismissed or granted, as appropriate.

6302.37 Sanctions (Rule 37).

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal, including dismissal with prejudice.

6302.38 Remand from court (Rule 38).

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board considers the reports and enters special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders conform to these rules.

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